MONTANA LEGISLATIVE HISTORY

Chapter 267 ~~19~~ 2001

Bill H 459 S _____ Original bill & history ___C

H. Committee on Nat. Res.		S. Committee on Nat. Res.	
Hearing Date(s) ~~2~~-12	✓ C	Hearing Date(s) 3-12	✓ C
2-21	✓ C	3-16	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HEARING ON HB 459

Sponsor: Representative Doug Mood, HD 58

Proponents: Todd O'Hair, Martz Administration
Rita Windhom, Lincoln County Board of Commissioners
Tim Ryan, Larex
Cory Farmer, student
Paul Buckley, Golden Sunlight Mine
Joe Gauthier, student
Ed Eggleston, Kootenai Forest Congress
Marty Johnson, Golden Sunlight Mine
Jack Mann
Kim Lyles
Don Serba, Pulp Paper Workers Resource Council
Michael Kakuk, Montana Contractors Association
David Bozher, student
Pat Heffernan, Montana Logging Association
Scott Mendenhall, Jefferson Local Development Corporation
Karl Schwiezer, Kalispell Chamber of Commerce
Julie Martin, mother
Roger Halver, Montana Association of Realtors
Chuck Samuelson
John Bloomquist, Montana Stock Growers Association, Montana Water Resource Association
Gary Marx
Lorna Karn, Montana Farm Bureau
Ellen Engstedt, Montana Wood Products Association
Frank Crowley, Asarco
Bruce Benson, League of Rural Voters
Steve Flynn, Louisiana Pacific
Margaret Morgan, Montana Petroleum Marketers
Webb Brown, Montana Chamber of Commerce
Pat Keim, Burlington Northern Santa Fe
Byron Roberts, Montana Building Industry Association
Mike Collins, Independent Montana Miners
Russ Ritter, Montana Resources

Opponents: Jim Jensen, Montana Environmental Information Center
Arlene Boyd, Northern Plains Resource Council
Steve Gilbert
Janet Ellis, Montana Audubon
John Wilson, Montana Trout Unlimited
Bill LaCroy

Joanne Bernard, farmer
Steve Kelley, Friends of the Wild Swan
David Dittloff, Montana Wildlife Federation
Tracy Stone-Manning, Clark Fork Coalition
Stan Frasier, Montana Conservation Voters
Sherm Jenky
Art Goldman, tax payers study group
Joe Getkowski, Montana River Action
Bob Ream, Montana Democratic Party
George Ochenski, Confederated Salish and Kootenai Tribes
Paul Hawks, Cottonwood Resource Council
Mark Fix

Opening Statement by Sponsor:

Representative Doug Mood, HD 58, read from MEPA. **EXHIBIT(nah35a01)** He stated that these are noble words and a wonderful sentiment. He handed out a sign up sheet from when MEPA was heard in 1971. **EXHIBIT(nah35a02)** It represents a wide variety of people supporting the original house bill. There were no opponents. He read some of their testimony. "Montana's productive age populous is leaving the state for employment in other states." If we want to keep tax payers in the state, the passage of the original bill was needed. "A major conservation challenge today is to achieve needed development and use of our natural resources while concurrently protecting and enhancing the quality of our environment." In the original hearing MEPA was referred to as the middle ground. However, something went wrong because in a short span of time people were fighting about what MEPA really meant. In 1977 there was discussion about whether MEPA was a substantive law. He read from a letter from Tom Judge that said that MEPA needed further definition and that the courts of Montana should not have that responsibility. Rep. Mood submitted an editorial article. **EXHIBIT(nah35a03)**

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 14.1}

Todd O'Hair, Martz Admistration, supports meaningful, common sense reform measures to the Montana Environmental Policy Act. He is a true conservationist, born and raised on a ranch. He learned that the actions you take today have impacts, both negative and positive, on future actions. The survivability of future generations depends on careful stewardship of the land today. Man can coexist with nature. The Martz administration

will not support legislation that could lead to the degradation of our environment. The legislation proposed is common sense efforts to make a process work more efficiently, timely and predictably. MEPA is a policy; there are no substantive laws contained in MEPA. MEPA was originally intended for a process for the public to provide input and judge the potential consequences of an action, before that action took place. It is a look-before-you-leap procedure. The intent of MEPA won't change with this legislation, it may streamline the process. There is increasing litigation with MEPA. We need to move away from the analysis paralysis that the state has fallen victim to. Passage if this bill will not bring a rash of polluted streams or LA-type air. Passage of this bill will help provide a business environment that current and potential businesses can manage.

Rita Windhom, Lincoln County Board of Commissioners, read from the bill, page 2, lines 13 and 14. It looks at the social and economic impacts of the projects noncompletion. In Lincoln county, over 53% of the residents live below 200% of poverty, 25% live below 100% of poverty. This is because the people are deprived of the opportunity to work because they are not considered in the process. A sense of hopelessness permeates the communities in the county. They are capable people, but they are not considered. With this sense of hopelessness a number of things happen in the community. There is a rise in domestic abuse. It is reflected in the children. The children leave never to return again. The juvenile court system is spending $800,000 per year. The school system is having to close a grade school because the children are leaving. They are fast becoming a welfare county. This bill could make a difference.

Tim Ryan, Larex, said that his company is looking into building a plant in Montana. This bill would allow them to create jobs in Montana. These jobs are not minimum wage jobs. These jobs would employ Montanans at $16 per hour or more, plus benefits. These are what Montana needs to keep from exporting our young people.

Cory Farmer, student, is attending MSU in Bozeman. In order for him to stay in Montana and support a family there will have to be a change in the laws to help turn the economy around. He hopes that these bills will pass and help the economy in the state.

Paul Buckley, Golden Sunlight Mine, stated that current regulatory requirements imposed on industry in Montana have more to do with the legal interpretation of laws and statutes and less to do with actual environmental impacts. It has a negative impact on the economic well-being of the citizens of Montana.

Since the Golden Sunlight Mine opened they have paid more than $205 million in wages and benefits. They have paid $270 million in supplies and services. This money is then put back into the community as the workers spend that money. While the economy of Montana is falling down and breaking up, Montana Resources employees are out of work, as well as the Asarco workers and other. We have got to rebuild Montana and this bill will help.

Joe Gauthier, student, said that people in Montana need goals and opportunities. He wants to be able to raise a family in Montana, but fears that he won't find a good paying job. This bill may help that.

Ed Eggleston, Kootenai Forest Congress, watched his organization crumble because they didn't have clear objectives in the law. This bill would help to define some of those objectives. We need to all work for jobs and the environment. It is time to start working together. The people in Lincoln County are good people and worthy of consideration.

Marty Johnson, Golden Sunlight Mine, said that when he graduated from highschool in 1971, good jobs were easer to find. Life then was stable, consistent and good. Some of our kids will never know a life like that. In Montana farming, ranching, logging and mining are all suffering. They have been under attack for many years now. This is not okay. Opportunities for workers have slipped away year by year. It is time to do something about the mess we are in. We are losing jobs daily. We no longer choose where we want to live, but rather live where we have to to work. We can change this. He wants his kids to know a secure life, to have a job, and to experience Montana as he did. We need to turn this around for all the kids in Montana.

Jack Mann, 74 years old, said that this change won't affect him, but it will affect the young people in Montana. MEPA is broken. There is massive evidence of the economic problems in the state. We need to think about the young people who depend on these industries.

Kim Lyles urged support of this bill. MEPA has become a cash cow for environmental lawyers and an economic disaster for business in the state of Montana. He has two grown children who are looking at leaving the state so that they can earn a living. He has two more children at home that he is hoping will have the opportunity to stay in Montana. This will simply make things more streamlined and more viable, and it will make the state much

more business friendly. We need to encourage business so that we can encourage a healthy economy.

Don Serba, Pulp Paper Workers Resource Council, emphasized that MEPA is a procedural statute. It establishes a process for analyzing potential environmental consequences of proposed activities. It has no substantive standards to protect the environment. Making any changes to MEPA does not weaken any environmental law. Violating MEPA does not translate into environmental degradation. This bill will improve the process that state agencies use in applying substantive environmental laws. This bill makes the law more predictable and more workable.

Michael Kakuk, Montana Contractors Association, supports this bill.

David Bozher, student, would like to have a job in Montana when he is done with school. The people behind this bill are the ones trying to give him that opportunity. He asked the committee to look at the positive economic impacts of this bill.

Pat Heffernan, Montana Logging Association, pointed out that an analysis would be required of the no action alternative. This is a very important part of this bill.

Scott Mendenhall, Jefferson Local Development Corporation, said that we need an effective way to go after the natural resources. In Jefferson county, the mines that they have provide much greater economic benefit than anything else.

Karl Schwiezer, Kalispell Chamber of Commerce, supports this bill.

Julie Martin, mother, has a family owned logging business. She would like to see her sons be able to go into the business with their father. The way things are going that will not be possible.

Roger Halver, Montana Association of Realtors, supports this bill.

Chuck Samuelson echoed previous testimony. It seems that there are endless court battles over MEPA and the decisions are made by the judges.

John Bloomquist, Montana Stock Growers Association, Montana Water Resource Association, registered the support of his organizations. This provides for some direction and definitions.

Gary Marx stated that we need to streamline some of the regulations that we have before us.

Lorna Karn, Montana Farm Bureau, supports this bill.

Ellen Engstedt, Montana Wood Products Association, submitted written testimony. **EXHIBIT(nah35a04) EXHIBIT(nah35a05)**

Frank Crowley, Asarco, submitted written testimony. **EXHIBIT(nah35a06)**

Bruce Benson, League of Rural Voters, stands in support of this bill. He submitted a petition of others who support this bill. **EXHIBIT(nah35a07)**

Steve Flynn, Louisiana Pacific, supports this bill.

Margaret Morgan, Montana Petroleum Marketers, supports this bill.

Webb Brown, Montana Chamber of Commerce, supports this bill.

Pat Keim, Burlington Northern Santa Fe, supports HB 459.

Byron Roberts, Montana Building Industry Association, supports this bill.

Russ Ritter, Montana Resources, stands in support of this bill.

Mike Collins, Independent Montana Miners, supports HB 459.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 0}

Jim Jensen, Montana Environmental Information Center, said that it is the substance of this bill that concerns him. The details in this bill can not hold up to the sunlight. This bill says the least responsible developers will have the lowest requirements. Those with the highest income will have different and higher standards to meet. The basis of any alternatives is the economic feasibility to the developer, not the protective nature in terms of the effect on the community, the environment or the economy.

He thinks there is a constitutional problem with that language and that it creates a problem with equal protection. He is also concerned about the term "due weight." There is no definition in law for that term. That is confusing and will be problematic. The tax payers are imposed a substantial burden in this legislation. It seems that this bill would need a fiscal note, although it doesn't have one. He does support changes in the way MEPA documents currently dismiss no action alternatives, but what was talked about here today reflects a misunderstanding about what a no action alternative is.

Arlene Boyd, Northern Plains Resource Council, submitted written testimony. **EXHIBIT(nah35a08)**

Steve Gilbert submitted written testimony. **EXHIBIT(nah35a09)**

Janet Ellis, Montana Audubon, submitted written testimony. **EXHIBIT(nah35a10)**

John Wilson, Montana Trout Unlimited, submitted written testimony. **EXHIBIT(nah35a11)**

Bill LaCroy said that he is an environmentalist. He knows these issues pretty well. He agrees that statements of philosophy make horrible law. MEPA is not broken. There is not requirement to demonstrate what economic feasibility is as per whether an entity can request that it not be applied to them. If MEPA is not retained you are going to get sued. Environmentalists are not frivolous people, they work hard.

Joanne Bernard, farmer, is opposed to this attempt to weaken MEPA. The majority of jobs that have been lost in Montana have been lost because of the global economic system. The companies are going to places that have no environmental protection at all. In 1970, when MEPA was brought about, the world was a different place. The population is growing and the need for resources is going to be outrageous. The companies are going to go to the places that are easiest to strip the land for the resources that they need. We are in denial if we don't think that this will happen down the road. We need to protect Montana. The environment is not the reason for the downturn in the economy.

Steve Kelley, Friends of the Wild Swan, recommends that if it isn't broken, don't fix it. He showed a map of the Swan River State Valley. It shows that there is a problem with logging and clear-cutting. There is no substantive law in Montana that governs logging. We need to protect fish. Statements of

philosophy make bad law, let's get some substantive law in this state. Let's not burden MEPA with the entire weight if the decision making of 5 or 6 agencies that made 17,365 MEPA actions in the past 10 years. There were only 14 lawsuits. The wave of litigation does not exist.

David Dittloff, Montana Wildlife Federation, said that MEPA is a look-before-you-leap bill. It provides information for agency decision makers before they actually make the action. It is a way for the public to get involved in decisions affecting our natural resources. He is concerned about this subverting those two main intents.

Tracy Stone-Manning, Clark Fork Coalition, opposes this bill.

Stan Frasier, Montana Conservation Voters, submitted written testimony. **EXHIBIT(nah35a12)**

Sherm Jenky is opposed to this bill.

Art Goldman, tax payers study group, wonders who will pay the bill after the environment is depleted.

Joe Getkowski, Montana River Action, is opposed to this bill.

Bob Ream, Montana Democratic Party, supports MEPA, but is in opposition to this bill.

George Ochenski, Confederated Salish and Kootenai Tribes, submitted written testimony. **EXHIBIT(nah35a13)**

Paul Hawks, Cottonwood Resource Council, is opposed to this bill.

Mark Fix submitted written testimony. **EXHIBIT(nah35a25)**

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 36.6}

REPRESENTATIVE CHRISTOPHER HARRIS asked a question of Mr. O'Hair. He had described this bill as adding no substantive procedures to MEPA, but why is the provision that says that, if the project sponsor can't afford it, it is not a reasonable alternative, not considered substantive. **Mr. O'Hair** said that his testimony was referring to environmental laws. There are no substantive environmental laws in MEPA. **REP. HARRIS** asked if he would agree

that this puts a cap on expenditures that could be made for a project alternative. **Mr. O'Hair** said that was correct. **REP. HARRIS** asked if he would regard that as a substantive provision rather than a procedural provision. **Mr. O'Hair** said that could be. He stresses that there are no substantive environmental laws contained in MEPA.

REPRESENTATIVE DEE BROWN asked, of the sponsor, how does he reply to the people from the Montana Wildlife Federation talking about the public's inability to respond through the changes in the process of MEPA. **REP. MOOD** replied said that there is nothing that is eliminated in the scoping process or any of the other processes that are currently involved in gathering the information for an EIS or to got through the environmental analysis. This bill gives the project sponsor some input into the alternatives. **REP. DEE** asked for the sponsor to address the line that says that it must be economically feasible for the project sponsor. **REP. MOOD** said that MEPA is a procedural law. There is a difference with the procedural laws that we are dealing with and the substantive laws which we are using to try to establish protection for the environment.

REP. BROWN asked a question of Steve Kelley. He had spoken of past logging, how many large projects have gone on in the Swan Valley in the last five years. **Mr. Kelley** replied that it is perpetual. None of the projects had bypassed MEPA that he knew of. There had been some salvage logging that is not held to the same standards.

REPRESENTATIVE RICK LAIBLE asked a question of Mr. Jensen. In looking at this bill, most of the bill seems to address itself to having the sponsor be involved, do you, Mr. Jensen, want the sponsor to be involved at all? **Mr. Jensen** said that the sponsor has every right of participation that anyone else has. Today the developers have input, what they don't have is veto power for anything that they don't want to afford. That is what this bill gives them. **REP. JENSEN** doesn't see that. The agency will consult with the sponsor to decide what is economically feasible. **Mr. Jensen** said that is wrong. It ought to be that way. The developers have all the rights and opportunities already.

REPRESENTATIVE RICK DALE asked Mr. Jensen if he could conceive of where it would be productive, but not economically feasible. **Mr. Jensen** said that he could. **REP. DALE** asked how he saw a company being able to pursue something that the agencies wouldn't approve. **Mr. Jensen** said that this bill prevents the agencies from requiring what the companies wouldn't be able to do.

Therefore the permit would not have that requirement in it and they would not have to forgo to project because of the permit. **REP. DALE** thought that the project sponsor would still be required to meet air quality standards, water quality standards, reclamation requirements and the other parts of the substantive laws that are required in major projects. **Mr. Jensen** said that they would not be because of this change to the law. This makes MEPA substantive. **REP. DALE** asked if that is a legal opinion. **Mr. Jensen** said that it is based on court decisions made under the Metal Mines Reclamation Act.

REP. DALE asked Mr. Kakuk a question. How does he see this section resulting in the outcome that Mr. Jensen thinks will happen? **Mr. Kakuk** said that he disagrees with Mr. Jensen. It is his legal opinion that this provision would not overrule substantive law. If reclamation law requires bonding at a certain level, that law will take precedence over whatever MEPA says. **REP. DALE** clarified that MEPA is the broad umbrella that ties the substantive laws together and the standards in those substantive laws are still the ones that apply. **Mr. Kakuk** said that in his opinion MEPA requires a hard look so that the state, the public and the project sponsor understands the potential impact to the environment.

REP. HARRIS asked a question of Mr. Ryan. He testified that he thought that this bill streamlined the MEPA process, could he explain that? **Mr. Ryan** had testified to the aspect of the bill that requires looking into economic benefits as well as environmental detriments. **REP. HARRIS** asked if he would agree that this would require greater analysis than the current MEPA law. **Mr. Ryan** couldn't comment on that.

REPRESENTATIVE GAIL GUTSCHE asked a question of John North. How would an agency go about getting access to a company's financial statement to determine whether or not they can afford to proceed with a project? **Mr. North** said that they would request the applicant's financial information, some of which they would claim confidentiality of, and they would then do an analysis of the information given. They would probably need to hire some outside consulting expertise to do that. **REP. GUTSCH** asked if that expertise would be an additional cost to the department. **Mr. North** said that potentially could be passed onto the project applicant, but it probably would be an additional expense to the department. **REP GUTSCHE** asked if he agreed that this bill should have fiscal note. **Mr. North** wasn't sure what the rules were for obtaining a fiscal note. **REP. GUTSCHE** asked if he agreed that there would be additional cost to the department. **Mr. North** said

that they were faced somewhat with this situation when they analyzed the Golden Sunlight application and, in that case, they did hire an outside consultant.

REP. GUTSCHE asked the same question of the sponsor. **REP. MOOD** wasn't sure why there is not a fiscal note and he will request one. If it is done under an EIS, they would charge the project sponsor for it. **REP. GUTSCHE** asked, under this bill, who would determine what information would be required or if the information is adequate. **REP. MOOD** replied that the project sponsor would provide financial information to the department and based on that information they would determine whether or not the project sponsor has adequate resources to comply with the required substantive laws.

REP. GUTSCHE asked Janet Ellis if she agreed with the statement that there are no substantive laws in MEPA. **Ms. Ellis** said that the Environmental Council has revealed that MEPA has been declared substantive under three statutes because of court cases.

REPRESENTATIVE RON ERICKSON asked a question of Mr. O'Hair. Looking at alternatives adds time to the project, should we extend the time allowed for the EIS? **Mr. O'Hair** thinks that the intent of the bill is to make sure that all of the alternatives are considered and all of the ramifications are considered. Although it may be more difficult, it is felt that the current time line is adequate. **REP. ERICKSON** asked if it would require a special session of the appropriate board, and would that board make a reasoned decision over time? **Mr. O'Hair** said that they would hope that they review the information and it would depend on the time frames that they are talking about as to whether they would have to call a special session or not. It will also depend on the board.

REP. ERICKSON asked the same questions of the sponsor. **REP. MOOD** said that if it adds time to the process it will be at the request of the project sponsor and he would understand that the delay is his responsibility. **REP. ERICKSON** asked if he is willing to go ahead and put into the law an extension for the time for the EIS because it is the project sponsor who has required it. **REP. MOOD** said that there is nothing in the framework of the bill that talks about time frames.
REP. ERICKSON again asked if REP. MOOD would be willing to put that into the law. **REP. MOOD** said that he would.

<u>Closing by Sponsor</u>:

{Tape : 2; Side : A; Approx. Time Counter : 22.2}

REP. MOOD showed the committee a couple of reports that were very large books. MEPA was enacted in response to a book called "Silent Spring." It had to do with the indiscriminate use of DDT throughout the environment by the federal government. We need policies in place to protect us from that kind of use of a product or activity. They needed information. MEPA was the last act that was instituted as a result of the industrial revolution. We are now in the information age, we are in a different world than we were in 1971. MEPA is a process, a procedural act to see if the permit that is being asked for is going to comply with the substantive laws. It is not an end in itself, it is a process by which we get to the end and the end is to protect water and air quality. What the legislature does is look at laws and modernize them. Why should we not modernize MEPA? It is time to make MEPA workable.

HEARING ON HB 473

Sponsor: Representative Cindy Younkin, HD 28

Proponents: Ted Hoffman, H & F Logging Inc.
Cary Hegreberg, Montana Wood Products Association
Ed Regan, RY Timber Corporation
Tim Ryan Larex
Rita Windom, Lincoln County Commissioners
Dave Skinner
Don Serba, Pulp and Paper Workers Resource Council
Kim Lyles, PPWRC
Gail Abercrombie, Montana Petroleum Association
Donna Thorton, logging contractor
Ed Eggleston
John Bloomquist, Montana Stock Growers Association, Montana Water Resource Association
John Youngberg, Montana Farm Bureau
Roger Halver, Montana Association of Realtors
Frank Crowley, Asarco
Steve Flynn, Louisiana Pacific
Patrick Heffernan, Montana Logging Association
Don Allen, Western Environmental Trade Association
Mike Collins, Independent Montana Miners

Opponents: John Wilson, Montana Trout Unlimited
Bob Stevens
Tracy Stone-Manning

EXHIBIT 1
DATE 2/12/01
HB 459

Appendix B

Montana Environmental Policy Act

Part 1
General Provisions

75-1-101. Short title. Parts 1 through 3 may be cited as the "Montana Environmental Policy Act".

History: En. Sec. 1, Ch. 238, L. 1971; R.C.M. 1947, 69-6501.

75-1-102. Purpose. The purpose of parts 1 through 3 is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971; R.C.M. 1947, 69-6502; amd. Sec. 1, Ch. 352, L. 1995.

75-1-103. Policy. (1) The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources so that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) ensure for all Montanans safe, healthful, productive, and aesthetically and

EXHIBIT 2
DATE 2/12/01
HB 459

Table 2-1. Persons and Interests That Supported or Opposed MEPA During the House and Senate Legislative Hearings in 1971. (Source: Senate and House Minutes, 1971)

Person/Organization	Supported MEPA	Opposed MEPA
Ted Schwinden, Commissioner of State Lands	X	
R.W. Beehaw, Board of Natural Resources	X	
John Anderson, Executive Officer of the Department of Health	X	
Winton Weydemeyer, Montana Conservation Council	X	
Zoe Gerhart, Citizen	X	
Dennis Meehan, Citizen	X	
Wilson Clark, Professor at Eastern Montana College, Billings/Yellowstone Environmental Council	X	
Jan Rickey, Citizen	X	
Polly Percale, Assistant Professor at Eastern Montana College	X	
Ted Reineke, Eastern Montana College Wilderness Club	X	
Chris Field, Montana Scientist Committee for Public Information	X	
Marilyn Templeton, Gals Against Smog and Pollution (GASP)	X	
Cecil Garland, Montana Wilderness Society	X	
Robert Helding, Montana Wood Products Association	X	
Dorthy Eck, League of Women Voters	X	
Robert Fischer, Montana Chamber of Commerce	X	
Ben Havdahl, Petroleum Industry, Rocky Mountain Oil and Gas Association, Montana Petroleum Association	X	
Don Boden, Citizen	X	
Joe Halterman, Good Medicine Ranch	X	
Calvin Ryder, Citizen	X	
Gordon Whirry, Bozeman Environmental Task Force	X	
R.E. Tunnicliff, American Association of University Women	X	
Kirk Dewey, Montana Council of Churches	X	
Pat Calcaterra and Margaret Adams, Montana Sierra Club	X	
Don Aldrich, Montana Wildlife Association	X	
David Cameron, Professor at Montana State University	X	
Mons Teigen, Montana Stock Growers	X	
Jim Posowitz, State of Montana Fish and Game Commission	X	
Frank Griffin, Southwestern Miners Association	X	

EXHIBIT 3
DATE 2/12/2001
HB 459

OPINION/LETTERS

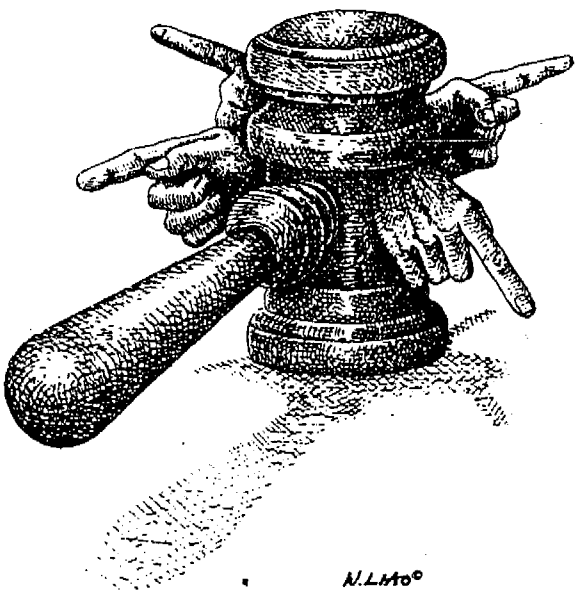
ENVIRONMENTAL ACTS

Vague laws are formula for frustration, failure

By DOUG MOOD

When Congress passed the National Environmental Policy Act (NEPA) in 1969, it created a web of procedural requirements that placed government agencies in a bizarre world of estrangement, guilt and anxiety. Only the neurotic genius of Franz Kafka could have imagined what that world would be like. U.S. Forest Service employees were required to comply with the new law, but the vagueness of the language in NEPA made it impossible for even the most well-meaning and dedicated of employees to know exactly what they were expected to do.

It was a world in which their actions and decisions would be subjected to minute scrutiny and would be the target of multiple lawsuits claiming lack of NEPA documentation. Federal employees would find themselves in court listening to a judge tell them that they had failed to do the right thing. 'Go back and do it again!' they were told, but no one could tell them exactly what it was they were supposed to do. Resolutions could take years.



The environmental impact statement (required by NEPA) examining the Flathead National Forest Plan was written in 1985. Environmental groups filed a lawsuit claiming inadequate NEPA documentation. It took until November 1993, eight years, before the 9th Circuit Court of Appeals would make their final ruling on that lawsuit.

In an article in U.S. News and World Report, published March 30, 1992, John Leo discusses the then vote for the law without fear of controversy. Let the courts make the hard decisions; they don't have to run for reelection.

To quote John Leo again, "Congress is not just refusing to write clear laws. It has gotten in the habit of dishing out bills that are frankly intended as a prelude to litigation. Many environmental laws are written as if to invite suits." Boy, is that ever true. It has taken 22 years of lawsuits and litigation for the courts to come even close to defining the words and requirements of NEPA.

But it is not the complexity of NEPA that leads to litigation. It is its brevity. NEPA is written in four printed pages. By comparison the National Historic Preservation Act fills 30 pages. However, the National Historic Preservation Act has caused relatively little litigation because its requirements are clearly written out within the body of the law.

NEPA requires "all agencies of the Federal Government" to write an environmental impact statement whenever there are "...major Federal actions significantly affecting the quality of the human environment ...." But what is a "major Federal action" and what constitutes "significantly affecting?" What is meant to be included with the "human environment?" For 22 years the Forest Service has been struggling in the procedural cobwebs of NEPA. Only recently has there been any sign that it may be emerging from the Kafkaesque world of blindly groping to satisfy the requirements of this law. It has taken the courts and the lawyers over 20 years to do what Congress could have done in 20 minutes back in 1969.

Congress could have included clear and precise definitions of the words and phrases used

EXHIBIT 4
DATE 2/12/01
HB 459

HOUSE BILL 459

Madam Chairman and members of the committee: For the record my name is Ellen Engstedt and I am representing the Montana Wood Products Association. Our membership is strongly in favor of HB 459 and thank Rep. Mood for bringing it forth.

I have watched for the better part of 30 years the State I have always called home become less than it could be because of relentless attacks on the natural resource based industries. I know of no one in any industry who wants to go back to the days of creating Superfund sites. In fact, those individuals take pride in "doing the job right" when they are allowed to even undertake a project.

HB 459 takes MEPA back to its plan of origin. Unfortunately, as is sometimes the case, as time passes the real intent of legislation moves into areas where it was never intended to go. This is the case with MEPA. It has stopped being a process under which all parties analyze the possibilities of a project to being used as a club by some to totally paralyze development.

When this happens, it becomes necessary to place in statute very specific criterion under which an event can take place. That is what HB 459 does. It places in statute, in specific language, that which should have occurred by rational process. It simply outlines the criteria for alternatives and does not allow an agency and/or its personnel to sit back and demand ever-increasing amounts of data and analysis, some of which could not even be achievable under current technology, with no end in sight. How fair is this kind of process?

HB 459 is a clarification of process bill and deserves your favorable vote. Thank you for your time.

EXHIBIT 5
DATE 2/12/01
HB 4159

SULA STATE FOREST
SEPTEMBER 2000

EXHIBIT 6
DATE 2/12/01
HB 459

ASARCO

February 12, 2001

RE: support for HB 459

Representative Younkin and Members of the Natural Resource Committee;

This letter is offered in support of HB 459 and the Legislature's attempts to make needed revisions to Montana's MEPA law. Clarification of the range of alternatives evaluated under MEPA such that they are reasonable, technologically achievable and economically feasible makes good sense. It is also important to provide a meaningful assessment of the no action alternative particularly as to the social and economic effects of no action.

In over 15 years working on the Rock Creek Mine Project, formerly owned by Asarco, we have seen an enormous amount of time and money wasted on analysis of peripheral issues that have little or no bearing on permit decisions. We have seen DEQ's economist state that natural resource jobs (such as mining associated with the 30 year life of the Rock Creek Mine) are not good for the local economy. We have seen new issues and new "endangered species" come to the fore over the years as new species are added to the lists. This includes a Forest Service "sensitive" plant that, although not recorded in the original vegetation study, had to be re-evaluated (and still not found) because it hadn't specifically been included in the list of plants to be searched for some ten or twelve years earlier. We have seen DEQ project managers come and go. However, we have not seen an end to the process.

Thank you for your consideration of our support of this bill.

Sincerely,

Douglas Parker

Douglas C Parker
ASARCO Incorporated

ASARCO Incorporated, 127 E. Main; #210, Missoula, MT 59802
(406) 728-8510
Fax No: (406) 728-3512

EXHIBIT 7
DATE 2/12/01
HB 459

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Joe Gauthier	214 4th Ave NW	Cut Bank, MT, 59427
Bob Mullen	Box 395	Hobson MT 6945-
Earl Baker	RT 1 Box 56	Moore, MT 59464
Ray Baker	#1 Baker Trail	Stanford MT 59479
Joyce Baker	#1 Baker Trail	Stanford MT 59479
Sam Graham	324 N. 18th	Bozeman, MT 59715
[illegible]	Box 1486	WEST MT 5993?

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Cynthia Hoover	Box 67	Rexford MT 59930
Terri Anderson	Box 500	Eureka MT 59917
Tom Jones	315 Paxson	Butte MT 59701
Scott Mendenhall	PO Box 1079	Whitefish 59937

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Colli Sly	PO Box 248	Libby mt 59923

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Pacing Bueno	PO BOX 1510 BIG TIMBER	59011
David Lichte	519 S. 9 Livingston ~~Expo~~	59047
Doug Hanson	2501 Westridge Dr. Bozeman, MT 59715	→
Dave Kevecer	5100 HWY 1 west Anaconda	→
John Esp	Box 102x Big Timber 59011	
Jerry Furtney	P.O Box 98	Townsend, MT 59644
Joyce Johnson TIBBALS	20 REDWOOD	BUTTE MT 59701
Rory TIBBALS	20 REDWOOD	BUTTE, MT 59701
Mary DeBruycker	2500 Bory Rd	Florence 59440
Roger DeBruycker	2500 Bory Rd	Florence 59440
Darrell Wilks	P.O. Box 125	Clancy, Mt. 59634
Jim Mockler	2301 Colonial Dr	Helena 59601
Carol Mosher	Tee Bar Ranch	Augusta 59410
Roland Mosher	" "	Augusta 59410
Gary Marks	Clancy MT 59634	
Kay Lynn Nuble	167 Saddle Mtn Clancy MT 59634	
Dan Harvey	6065a HWY 87N Bozeman MT 59715	
[illegible]	5145 Hwy 93 S [illegible]	Alca MT 59804

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
FRED JANICKE	1308 2ND AVE NW	GT FALLS MT 59404
Jack Mahon	124 N. Walnut	Townsend MT
JAN & RON HARTMAN	P.O. Box 39	WILSALL, MT 59086
GENE NELSON	3926 Bellecrest	Missoula 59801
Beth Emter	29 Hidden Valley	Clancy MT 59634
Marketa Woods	5300 Hwy 2, S.	Libby MT 59923
Claude Woods	" " "	" " "
Carol Cysmour	237 Duffield Rd	Libby, MT 59923
David & Barbara	13333 Mickelson Rd	Mol MT 59802
Larry Cyull	430 Sheldon Ln	Libby MT 59923
Marvin Mead	5180 Green Meadow	Helena, Mt. 59602
Ed Regan	129 N. Cherry St.	Townsend MT 59644
[illegible]	Box 1557	Kalispell, MT 59903
[illegible]	Box 1557	Kalispell, MT 59903
John Semple	1819 FLOWER AVE HELENA MT	Helena, MT 59601

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Jason Todhunter	PO Box 221	Harlowton, MT 59036
Chuck Sammelson	127 Lake Hills Ct	Big Fork MT 59911
Steve Nettschlot	665 S. Davis	Helena MT 59601
Pat Jones	PO Box 224	Virginia City
Judy Jones	3115 Padon	Butte, MT 59701
John Fitzgerald	818 Ewa Ave	Helena, MT
Daniel P. Smy	PO Box 248	Libby 599
Cheryl Cramer	65 Robbe Rd	Libby 5992
Ken Erickson	430 Sheldon Lane	Libby
Lois Croucher	65 Robbe Rd	Libby
Janice George	PO Box 334	Seeley Lake, MT 598
Richard Hays	" " "	" " "
Gary L Christo	7 Locust Loop	Bozeman 59
Darrell Cooper	2100 Petty Rd	Alberton MT
Austin Dillree	Hibbeln	Alberton MT 5
Larry Dillree	Box 91	Ovando MT 5
Ida Herzog	Box 689	W.S.S. MT 59
Richard Harris	Box 669	Libby MT 59

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
David Boyles		Cut Bank, MT 59427
Cory Farmer	120 Manor Drive	Libby, MT 59923
Bunny Hanis	5935 St. Francis Dr	Missoula, MT 59803
Stephen Alger	PO Box 389	Deer Lodge MT 59722
Ted E Nelson	116 HARWOOD	HELENA, MT 59601
Mark Bu	3219 1st Ave N.	Great Falls MT 59401
Don Serda	216 Sentinel MSLA 59801	Mola, MT 59801
Sheila Keller	183 Fairmont Rd	Kalispell, MT 59901
Joe Keller	183 Fairmont	"
Jules Maltz	PO Box 1043	Townsend MT 59644
Patricia Watson	1234 N Walnut	Townsend MT 59644
Ted Antonioli	5907 Longview	Missoula MT 59803
Delila Coucher	65 Robbe Rd Libby MT 59923	
Angela Janacaro	202 S Harrison	Townsend 59644
Pam Langley	1806 Capitol	Helena, MT 59601

NORTHERN PLAINS RESOURCE COUNCIL

The Grassroots of Montana

EXHIBIT 8
DATE 2/12/01
HB 459

Arleen Boyd Testimony on HB 459

- I am testifying on behalf of the Northern Plains Resource Council and the Stillwater Protective Association, which I chair. I was involved in the negotiation of the Good Neighbor Agreement through which our groups and the Stillwater Mining Company established a process for opening lines of communication and addressing environmental and social concerns beyond those dealt with in the official permitting process. I am a member of the oversight committee responsible for implementing that agreement.

Requirement that Alternatives be Economically Feasible , subsection (1)(b)(iv)(C)(I)

- The proposed bill provides no definition of what "economically feasible" means. In my business I develop return-on-investment and other analyses for companies across industries. There are many ways to establish the criteria for these analyses, including timeframes, how to allocate expenses and what to include in the analysis of return. A project sponsor can insure that a feasibility study will reach almost any desired conclusion by selectively defining those criteria and the formula for calculation.
- While negotiating the Good Neighbor Agreement, we tried for weeks to define "economic feasibility" and concluded that it could not be done. All parties agreed that you can set up such studies to conclude whatever you want them to say.
- Even if one could define "economically feasible," the very nature of a feasibility study ensures that different standards will be applied to different companies.
    - "Economic feasibility" standards will allow financially weak or incompetent companies to avoid environmental responsibility. This is unfair and inconsistent with our competitive market system that is designed to reward competent companies that operate appropriately financed, well-planned projects. For example, no proposed alternative that included any cost for environmental protection would be economically feasible for Canyon Resources, a company poised on the edge of bankruptcy. Yet for a well-run company like Stillwater Mining it would be feasible to apply the appropriate standards of environmental protection and ensure that we taxpayers would not be left with the clean-up bills when a project ends.
    - Perhaps even more importantly, basing an "economic feasibility" standard on the financial resources of a company, raises the specter of lowering the bar for an entire industry because no company is going to do a meaningful economic feasibility study that fairly factors in conservation costs if they know their competitors are not obliged to do so.

2401 Montana Avenue #200◆ Billings, Montana 59101◆phone (406) 248-1154 ◆ fax (406) 248-2110
e-mail: info@nprcmt.org ◆ *web site:* www.nprcmt.org

Expands Right of Corporations at the Expense of Citizens, subsections (C)(II) and (III)

- This bill expands the rights of corporations (project sponsors) at the expense of citizens in decisions regarding projects that will affect their lives by allowing project sponsors, but not citizens, to challenge agency decisions as to whether alternatives are economically feasible.
- Moreover, most of the Boards to which appeals will be directed were not created to provide oversight for our regulatory agencies, but rather to advocate for their industries. They do not have environmental expertise and, based on their charters, it is highly unlikely that they have the expertise to sort assumptions from data in an economic feasibility analysis.

Longer MEPA Processes

- By giving project sponsors the right to challenge the economic feasibility of agency decisions, this bill adds a major step to the MEPA process. If implemented fairly, the bill will result in larger government bureaucracies and consequently larger budgets to deal with the corporate appeals. Furthermore, the bill prohibits agencies from charging a project sponsor for any work done to defend their decisions, so the public will pay or the process will make a mockery of environmental concerns by leaving the sponsor solely in charge of the final phase of the MEPA process.

- It is unclear how these appeals will be affected by the time limits imposed on Environmental Assessments and Impact Statements by Senator Grimes' SB 377 being heard as we speak. Will that bill's time limits be suspended during the appeals allowed under this bill or will the time limits continue to run, giving project sponsors an opportunity to tie up the MEPA process until, as Senator Grimes proposes, the agency is required to issue a permit when time expires?

Solution

- This bill gives the industries an end run around the recommendations of the Environmental Quality Council. For two years, the EQC (a bipartisan group of legislators, citizens, and industry representatives) studied MEPA and then recommended, in Senate Joint Resolution 3, further study to examine numerous issues, including the evaluation of alternatives in the MEPA process.

- As a citizen who believes firmly in fairness and in the MEPA process, which involves both the public and industries in reaching solutions to ensure that corporations behave responsibly as they extract our natural resources in pursuit of their business objectives, I ask the Committee to table this bill and support the passage of Senate Joint Resolution 3.

EXHIBIT 4
DATE 2/12/01
HB 459

Madame Chair and Members of the Committee:

I'm Steve Gilbert from Helena, a consulting biologist representing myself. Rather than speaking directly about this bill, I want to share some feelings about the move to 'streamline' MEPA in general.

I've worked on all sides of the MEPA process for over 25 years. I've gathered baseline biological data, provided technical data for portions of MEPA documents, written MEPA documents from the ground up, applied for grants requiring MEPA documentation. I would guess that my knowledge of the process is greater than yours.

It is a process that gives guidance to state agencies charged with the responsibility of protecting our resources. There are some good laws that back up the process , laws that ostensibly protect water quality, air quality and provide for reclamation.

I appreciate your concern about the economy, and I know that you've all learned that it's important to sound like you care about the environment. You've also all learned how important it is to talk about improving the economy. These are things that got you elected. Somehow in the process, someone has misguided many of you into thinking that a healthy economy requires fewer environmental processes and controls. I'd like you to show me one bit of peer-reviewed data produced in the past ten years that even begins to suggest our economy can only blossom if you make the environmental permitting process easier for industrial development. Show me one economic study that says that building electrical generators, railroads, or mining gold and coal will provide Montana with long-term positive benefits. There are, however, recent studies that show us a clean and healthy environment is something we can continue to bank on over the long haul. To protect our environment in this live-for-today atmosphere will not only require the vigilance of Montanans, but it will require the level of environmental process provided by MEPA.

It is clear to me that many of you may not know much about how environmental protection really works and many of you do not understand the importance of the framework developed to support it. I heard from Governor Martz last week as she supported SB319, the bill to eviscerate MFSA, that we needn't worry about our environment because MEPA would be there to protect it. Hello, any one home?

I heard from Ms.Younkin that we have great laws in place to protect the environment. There are laws, she is right, but they are subject to the exact same process reflected by bills to gut MEPA. They have been compromised and re-compromised by legislatures. They require careful application by state agencies to work properly. Who runs our state agencies? Hello again. Yes, governor-appointed directors. Politics guiding environmental decision-making. Under the recent Republican administrations, directors of most of our state agencies we might look to as watch-dogs of our environment have avoided doing important parts of their jobs which would support these laws. I don't expect this to change under this administration.

Do you know what or who looks out for environmental concerns? I can assure you it is never the water or air or the fish and wildife and vegetation looking out for their own interests. It's rarely the directors of any agency, but it is sometimes the tenacity of a few honest scientists working for agencies, but whose hands are tied by internal and administrative politics. Who does look out for the environment? It's the people you think you are representing with legislation to streamline the process. How do they do their work? Well, they come here with blood pressure surging to appeal to you in the legislature, they write you, call you, try to reach out to you...but do you know what? Many of you aren't here to represent the Montanans who elected you and who overwhelmingly support a clean and healthy environment. Many of you are here, like it or not, representing industry with these bills, not us, not the environment.

So how do you think the environment has a voice through your streamlining process? Litigation is how. Litigation is counter-productive to everything except to the wallets of the attorneys and often the protection of the environment. These bills you are probably going to pass will create a litigative atmosphere unlike anything you have ever seen.

Please don't keep telling me that the next set of laws down the line will protect the environment. Don't waste your breath telling me you care about the environment and how it's important to balance good jobs and environmental protection unless you vote to maintain the regulatory framework of MEPA.

Do not vote for this bill or any other of many to come offering to streamline the processes. The processes have already been streamlined.

EXHIBIT 10
DATE 2/12/01
HB 459

Testimony by Janet Ellis for Montana Audubon

HB 459 - ALTERNATIVES ANALYSIS
Sponsor: Rep. Mood

Montana Audubon has the following questions about this legislation. Although, according to an industry fact sheet, the stated goal of HB 459 is to "clarify the agencies' responsibilities regarding the alternatives analysis and thereby make the environmental review more efficient and equitable." We do not think this goal is realized because of the following questions raised:

A. Section 1, subsection (1)(b)(iv)(C)(I): Requires that any alternative considered by an agency be reasonable in that it must be currently both technology achievable and **economically feasible for the project sponsor**. (Page 2, Line 2 - 3)
   - What information will the agency be required to get before it can determine economic feasibility? forensic accountants
   - How will the agency determine economic feasibility - what assumptions will be made?
   - Do agencies have the expertise to judge what is economically feasible for a project sponsor?
   - Is the financial assessment of the applicant restricted to assests of the subsidiary - or is the parent company's assets also available to be examined?
   - What happens in instances with well financed (richer) project sponsors, versus less rich project sponsors? Would the same project have different alternatives depending on how wealthy the project sponsor is?
   - What would happen if the project sponsor changed during the EIS process? A good example may be the Rock Creek mine that has evidently had several owners - could the EIS change alternatives with a new owner? Would assests of each company allow different alternatives to be examined?
   - What happens if a project sponsor is close to bankruptcy?
   - Does the differential treatment of a project sponsor (depending on their financial backing) raise any constitutional questions of equal treatment?
   - What happens if a sponsor says that the alternative is not financially possible? For example - a game farm (bad example - but simple) could not afford double fencing on their game farm that exists on elk winter range?
   - What happens if DNRC is the project sponsor - as well as all the beneficiaries of the school trust - and one of these parties decides that an alternative is not economically feasible?
   - Can a school district appeal something that DNRC thinks is reasonable?
   - How will a state agency - such as DNRC - determine what is economically feasible for a state initiated project such as a timber sale? Does this change anything from how things are done now - or not?

B. Page 2, lines 7 - 11: Allows the project sponsor to ask the appropriate board to review a proposed alternative. According to drafters, this "review" process does not grant the board any additional authority.
   - what does this do to statutory time frames?

C. Page 4, lines 24 - 26: Defines "appropriate board," "environmental review," and "project sponsor." It lets "each beneficiary of any trust" be the project sponsor on school trust lands.
   - what happens if school districts want different outcomes?

EXHIBIT 11
DATE 2/12/01
HB 459

HB 459 – Mood
Testimony of Montana Trout Unlimited
February 12, 2001

This bill puts project sponsors, instead of Montana citizens, in the drivers seat in determining which alternatives may or may not be considered when completing an environmental review. It gives them unchecked unilateral veto power over consideration of any alternative THEY say THEY can't afford. So on the same project, alternatives for a rich company would be different than alternatives for a poor company … that doesn't seem to make sense.

This changes the whole philosophy of MEPA designed to allow citizen input and scoping to determine the alternatives and potential mitigations that are considered not the financial ability of the project sponsor.

This bill also creates a system for endless appeals at the discretion of the project sponsor and **MAKES THE TAXPAYER'S FOOT THE BILL FOR THOSE APPEALS.**

This bill, when taken in consort with SB 377, would technically allow a project sponsor to get a permit and avoid an EA or EIS altogether.

This bill is expensive, it requires significant cost increases for newly required economic analysis done in conjunction with an EA or EIS.

The section of this bill which makes beneficiaries of any state trust a potential project sponsor conflicts with the Montana Constitution and authority of the State Land Board according to a DNRC fiscal note comment on the exact same provision in SB 377.

Finally, and perhaps most important, this bill doesn't have a fiscal note to reveal the true cost to the taxpayers.

For these reasons, we oppose this bill.

EXHIBIT 12
DATE 2/12/01
HB 459

TESTIMONY OF STAN FRASIER, HELENA, MONTANA
MONTANA CONSERVATON VOTERS
HOUSE BILL 459
MONDAY FEBRUARY 12, 2001 3 P.M.

Madam Chairperson and members of the committee, my name is Stan Frasier, and I am a realtor from Helena. I am testifying today on behalf of Montana Conservation Voters, a membership organization of 1,300 from throughout Montana, dedicated to effective citizen participation in environmental and conservation decisions.

We oppose House Bill 459 for the following reasons:

1. The bi-partisan Environmental Quality Council studied the Montana Environmental Policy Act - MEPA - over the last two years, holding several hearings and meetings and taking testimony from hundreds. EQC issued a report which said "the MEPA process results in informed agency decisions and ultimately better decisions" *(page 167, 2.3 (1); page 169 2.6 (1));* and that MEPA results in state agencies making "legally defensible decisions, where the more complete the environmental document, the more likely the state is to prevail in litigation" *(page 168, 2.5 (1))*.

   At the end of the study, special interests came to the EQC with major proposals that would drastically weaken MEPA. The EQC then recommended Senate Joint Resolution 3 to study the issues that are raised in this bill. This bill flies in the face of the EQC study, and SJR 3.

2. We have a concern about the definition of "project sponsor" found in Section 2, item (3) of the bill which says that a project sponsor refers to *each* beneficiary of any trust, for actions involving state trust lands. This definition includes all Montana taxpayers and school districts. It means that there will be more than one project sponsor for actions involving state trust lands. In fact, there could be several.

   The land board is required under Article X, Section 4 of the Montana constitution to make decisions on schools lands for the benefit of Montanans; it is, in effect, the project sponsor.

What happens when a school district - now a project sponsor under this bill for state land decisions - has a conflicting interest or opinion from the State Land Board and wants a different outcome? Does the agency respond to both the Land Board and the school district, since they are now both project sponsors? What happens when 2 or more school districts each have different opinions about the management of state lands from each other and from the Land Board? Does the agency have to resolve the conflicts between all of these "project sponsors" when conducting an environmental review?

In section 1 (C)(II) of this bill, the agency would have to consult with "the project sponsor" regarding any proposed alternatives. Does this mean that the agency must consult with all Montana taxpayers, or all school districts on alternatives affecting state lands? And if so, at what cost to taxpayers?

3. Our third reason for opposing HB 459 is the cost to taxpayers created by this bill. There is no fiscal note for HB 459. There should be. The fiscal note on SB 377, finds that agencies that already have to do a NEPA review (National Environmental Policy Act) will have to do two reviews under conflicting timeframes, resulting in delivery of analysis at different times. "Depending on the issues, this could cause a 25% to 50% increase in cost, and the increase could be 100% plus if a particularly difficult issue is involved, especially together with some of the other changes to MEPA being proposed (House Bill 459)." HB 459 creates increased costs to taxpayers that should be fully analyzed before the committee takes action.

4. We don't need to hastily push through bills that will weaken MEPA. We've seen what happens when the legislature hastily acts without considering the consequences, such as deregulation in 1997. Weakening MEPA won't solve the deregulation mess... it will only create other huge consequences in the form of higher taxpayer costs for analysis, pollution clean up and litigation.

"to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law."

Montana State Constitution

EXHIBIT 13
DATE 2/12/01
HB 459

STATEMENT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION IN OPPOSITION TO HB 459

FEBRUARY 12, 2001

GOOD AFTERNOON, MR. CHAIRMAN. I AM_____, AND I AM APPEARING HERE TODAY FOR THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION.

MR. CHAIRMAN, THIS BILL WOULD ELIMINATE THE ABILITY OF AGENCIES TO FULFILL THEIR RESPONSIBILITIES TO FOSTER DEVELOPMENT WHILE PRESERVING THE QUALITY OF THE HUMAN AND NATURAL ENVIRONMENT. REVIEWING AGENCIES SHOULD NOT BE RESTRICTED IN THE RANGE OF ALTERNATIVES TO PROPOSED ACTIONS THAT THEY EVALUATE. THE PURPORTED ECONOMIC ABILITY OF A SPONSOR TO IMPLEMENT ALTERNATIVES SHOULD NOT BE THE CRITERION FOR ALTERNATIVE SELECTION.

THE ESSENTIAL EFFECT OF THIS BILL IS TO PUT THE ECONOMIC AND ENVIRONMENTAL COSTS OF PROJECTS ON THE PUBLIC, WHEN THEY SHOULD BE BORNE BY THE APPLICANT. THE MONTANA LANDSCAPE IS LITTERED WITH THE HAZARDOUS AND TOXIC REMNANTS OF PROJECTS UNDERTAKEN WITHOUT ALTERNATIVES ANALYSES, AND THIS LEGACY SHOULD NOT BE NURTURED AND PERPETUATED BY THIS LEGISLATURE.

MR CHAIRMAN, THIS BILL SHOULD NOT BE FAVORABLY REPORTED.

MR. CHAIRMAN, WE THANK YOU FOR THIS OPPORTUNITY TO PROVIDE THESE COMMENTS TODAY.

EXHIBIT 25
DATE 2/12/01
HB 459

I am Mark Fix and I own a ranch about 18 miles from Miles City on the Tongue River.

I am opposed to HB 459.

We, the people in Southeast Montana, are involved in a MEPA action for Coal Bed Methane (CBM) now. The water being discharged from the wells is not suitable for irrigation. The sponsor could claim that it is too expensive to treat the water or to recharge the water back into the aquifer it came from. With this bill that means that the only economical answer is to discharge the water into the Tongue River. With 10,000 wells projected in Southeast Montana approximately 40,000 acres of irrigated land along the Tongue would be sterilized with this water. This bill does not allow the agency to protect the people of Montana.

I urge you to vote against this bill.

Mark Fix
HC 32, Box 4196
Miles City, Montana 59301
406-421-5460

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on February 21, 2001 at 7:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: None.

Members Absent: Rep. Bill Eggers (D)

Staff Present: Rhonda Van Meter, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 459

EXECUTIVE ACTION ON HB 459

{Tape : 1; Side : A; Approx. Time Counter : 0.1}

Motion: **REP. MOOD** moved that **HB 459 DO PASS.**

Discussion:

Larry Mitchell passed out amendments HB045901.ate **EXHIBIT(nah43a01).**

Motion: **REP. MOOD** moved that the **AMENDMENTS HB045901.ATE FOR HB 459 BE ADOPTED.**

Discussion:

REP. MOOD explained the amendments.

Vote: Motion **carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.**

Motion: **REP. MOOD** moved that **HB 459 DO PASS AS AMENDED.**

Discussion:

REP. WANZENRIED asked **REP. MOOD** if he agrees with the fiscal note **EXHIBIT(nah43a02). REP. MOOD** stated, DNRC is missing from the fiscal note. They do projects from the inside out, mainly on timber sales or other projects on state lands. He stated that he does not agree with the fiscal note as it stands. Numbers 11 - 15 have to do with the coordination with MEPA and NEPA and the adopted amendments make it clear that NEPA is the act that takes precedence. He stated that he does not believe there are additional costs involved in the law. The bill puts sideboards and definitions into a bill that currently has none. HB 459 will make it easier for the departments to comply with the law because it gives them some guidance and direction as to what is going to make up the alternative analysis. There is some discussion in the fiscal note about the project sponsor and the ability to go to an appeal board and they estimate there would be one a year. He stated that he feels that number is probably about right.

REP. GUTSCHE asked **REP. MOOD**, regarding numbers 5 - 7 of the fiscal note, which say there will be two EIS's completed a year at the cost of $10,000 and that the project sponsor will agree to

pay for the costs. Number 7 says, "If the project sponsor were not willing to pay for the cost of the economic analysis, the cost of the analyses would have to be absorbed by the general fund." There is no mention on the note about any costs coming out of the general fund. How does this work? **REP. MOOD** stated that he does not know the process in order to make that determination. It would indicate under normal circumstances they have asked the project sponsor to pay for the costs. **REP. GUTSCHE** stated that she agrees but there is no way of making them pay if they don't want to. Some general funds may need to be used. **REP. GUTSCHE** then asked, regarding #14, where are we told that the federal government will match all of the funding? **REP. MOOD** stated that the Department of Transportation projects are done in conjunction with the federal government.

REP. YOUNKIN added, regarding #7, that means absorbed by the general fund appropriation to the department. It is not going to be new money from the general fund.

REP. STORY stated they are talking about those EIS's that DNRC has to do anyway. There is not "new money" being used. Department of Transportation money is pretty much all gas tax, that's how they fund their projects.

REP. MOOD commented on page 2, line 23 of the bill. He stated, currently the department tends to concentrate on the negatives when they write an EIS. This is trying to, through the EIS, determine whether or not the project is going to be able to comply with the laws that do apply. That is the way it should be. It is very important to add lines to this bill saying that the departments must analyze what the beneficial aspects of a project are. We should know what environmental and economic parts of these projects we are forgoing as a result of not doing the action. That is the real strength of the bill and would help the analysis process.

REP. ERICKSON asked **REP. MOOD**, regarding amendment number 3, once that action comes about we take time out of the timing that might come through with Senator Grimes' bill. **REP. MOOD** stated yes. If a project sponsor is appealing to the board the time it takes for that appeal to take place is taken out of the time lines that are in SB 377. **REP. ERICKSON** stated that he is pleased with that amendment. He also stated that his sense is that numbers 2 and 4 are going to take a lot of time. He then asked **REP. MOOD** why he does not have any amendments on those two issues. **REP. MOOD** stated he thinks those two issues are a particularly strong and important portion of the bill. By the time they go through the

EIS process and get to that stage they should have all the information they need in order to make those conclusions. **REP. ERICKSON** stated that he respectfully disagrees.

REP. STORY stated that section 202 of the act says that the agency will charge fees to applicants and 203 is the fee schedule. He then referred to Rep. Kasten's bill that had to do with game farms. It stated that the fee schedule is based on the cost of the project.

REP. YOUNKIN stated there is provision in statute for determining a fee that the project sponsor or the applicant has to pay to the department conducting any environmental review. That fee is based upon the cost of the project. Therefore there is money coming in from the project sponsor no matter what.

REP. STORY stated that the mine in Lincoln went through a lengthy process which kept getting shut down because they didn't pay their fees. That is how the process works with private individuals.

REP. HARRIS asked **REP. MOOD,** by taking out project sponsor how do we evaluate economic feasibility, what is the standard and the criteria? **REP. MOOD** stated there are opportunities for the project sponsor to comment on various alternatives. We are trying to get a complete analysis of what is necessary in order to comply with the law. That is what an EIS or EA is trying to do. This will put a balance between what the agency believes is necessary in order to comply with those laws and what the project sponsor can do in terms of his economic strength. Between number 1 and number 2 the balance occurs and the opportunity occurs for the project sponsor to have input into what economic feasibility is for that individual. By taking those words out we are not limiting the agency from analyzing the alternatives based upon the project sponsor's financial capability. We are keeping the current emphasis on what is necessary in order to comply with the substantive laws. He stated that he would not have taken those words out had it not been for the second section which balances the feasibility portion of it. **REP. HARRIS** asked, for example, if *Microsoft* was the project sponsor, what is economically feasible for *Microsoft* might be vastly different from what might be economically feasible for a bankrupt company. Would that be fair to say based on the next provision? **REP. MOOD** answered that he thinks that is absolutely true and entirely appropriate.

REP. WANZENRIED asked **REP. MOOD,** if the project sponsor disagrees and doesn't feel that the reviewing agency has given due

consideration to the proposed alternative from a feasibility standpoint that then can be appealed to the appropriate board? **REP. MOOD** stated that is correct. **REP. WANZENRIED** asked, then the only question to be resolved is the economic feasibility? **REP. MOOD** stated, if an alternative has been proposed that the project sponsor thinks is unnecessary and adds extra financial burden, that is an issue that will be taken up with the appropriate board.

REP. HURDLE asked **REP. MOOD,** when you are creating the balance between the sponsor and the EIS process could it get to the point where the sponsor would have to prove that they couldn't afford to do something and would that be okay? **REP. MOOD** stated no. If, at the end of the Environmental Analysis, the department that is granting the permit determines that the project sponsor is not financially capable of mitigating the project to the point that they need in order to comply with the law then the no action alternative would recommend no action because of those reasons. The project would take place based upon two things; the measures that are necessary in order to comply with the substantive laws and whether or not the project sponsor is capable of complying with those laws. **REP. HURDLE** asked what "no action alternative" means. **REP. MOOD** stated, the department writes several different levels of activity in an EIS. Typically they write 4 to 5 alternatives. Amongst those alternatives there is a no action alternative. If nothing happens as opposed to something happening, that is a no action alternative. The no action alternative talks about the consequences of not doing the project. There is a stipulation in the bill stating if there is a no action alternative there should be a further analysis of what is the forgone economic opportunity, etc.

<u>Vote</u>: Motion **carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.**

EXHIBIT 1
DATE 2-21-01
HB 459

Amendments to House Bill No. 459
1st Reading Copy

Requested by Representative Douglas Mood

For the House Natural Resources Committee

Prepared by Todd Everts
February 20, 2001 (3:09PM)

1. Page 1, line 18.
Following: "environment"
Insert: "and that will ensure that in any environmental review under this part, when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsection (1)(b)(iv)(C)"

2. Page 2, line 3.
Strike: "for the project sponsor"

3. Page 2, line 11.
Following: "section."
Insert: "[The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in [section 1 of Senate Bill No. 377]]."

4. Page 4.
Following: line 5
Insert: "(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to a detailed statement that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to a detailed statement that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act."

5. Page 4, line 26.
Following: "each"
Insert: "institutional"
Following: "trust"

Insert: "as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328)"

6. Page 4.
Following: line 30
Insert: "NEW SECTION. **Section 4. Coordination instruction.** (1) If Senate Bill No. 377 is not passed and approved, then the bracketed language in [section 1(1) of this act] that amends 75-1-201 is void.

(2) If Senate Bill No. 377 is passed and approved and if it does not establish time limits for environmental review, then the bracketed language in [section 1(1)of this act] that amends 75-1-201 is void."

- END -

FISCAL NOTE

EXHIBIT 2
DATE 2-21-01
HB 459

Bill #: HB0459 **Title:** Generally revise MEPA

Primary Sponsor: Douglas Mood **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director 2/20/01 Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:		
State Special Revenue	75,000	75,000
Federal Special Revenue	435,000	435,000
Revenue:		
State Special Revenue	10,000	10,000
Federal Special Revenue	435,000	435,000
Net Impact on General Fund Balance:	0	0

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Department of Environmental Quality

1. The project sponsor will provide adequate fiscal information to enable the agency to complete an economic feasibility analysis.
2. The fiscal information that will be required exceeds the level of fiscal information that is provided to the agency under the current law.
3. Historically, only one economic feasibility analysis has been performed during the completion of an EIS. Even though the cost of this analysis is not required to be paid with project sponsor fees under current law, the project sponsor did pay for the cost of this analysis.
4. The agency will contract with a specialized Certified Public Accounting firm to perform the economic analysis at a cost of $5,000 per analysis.

5. Two EISs will be completed each year that will require this analysis for a total annual cost of $10,000.
6. The project sponsor will agree through a Memorandum of Understanding (MOU) to pay for the cost of the analysis.
7. If the project sponsor were not willing to pay for the cost of the economic analysis, the cost of the analyses would have to be absorbed by the general fund.
8. The appropriate board will hear one review or appeal each year. This appeal or review will be done during a routine board meeting. Any additional costs will be absorbed by the agency.
9. The agency currently completes a meaningful no-action alternative analysis.
10. The agency currently already conducts an analysis of benefits.

Department of Transportation

11. The bill will require MDT to do a separate MEPA document as well as a NEPA on all actions. This means two separate documents for each project other than Categorical Exclusions. MDT does approximately one EIS per year and three to five EAs per year. The cost of an EIS is $500,000 to $1,000,000 and the cost of an EA is $50,000 to $100,000 for an average of $750,000 for an EIS and $75,000 for an EA. Even though two documents are required, there will be similarity and this will reduce the cost of the second document.
12. The alternatives for analysis for MEPA will be different from NEPA. This means that public meetings, drafts, permits, regulatory agency coordination may or may not coincide for the two documents. Depending on the issues, the cost could increase from 25% to 50%. If a particularly difficult issue is involved, and some of the other changes to MEPA being proposed occur, the cost could increase by 100%. It is assumed this cost will be 40% of the present cost of doing business with one NEPA/NEPA document.
13. Because of the difference between MEPA and NEPA, new information that becomes known will lead to differences such that additional litigation opportunities will happen that will result in major changes to both documents. The cost of this litigation and the necessary changes to the documents to make the corrections that are inevitable could reach the cost of the original document. This later statement is probably true of EAs more than EISs. The level of analysis for an EA is less. When a challenge is made to an EA, usually it is because something has been left out that is very important. Because the initial cost is low, it does not take much of an issue to double the original estimate. On average this will come to a 10% increase over the cost of doing one MEPA/NEPA document.
14. All additional cost will be eligible for federal aid participation with the only fiscal impact on state funds being project match. (The federal aid is not new revenue.) And, the increased cost shown will represent the cost of additional work by consultants. MDT normally hires consultants to do EAs and EISs. Because of the significant amount of time required to be successful, the necessary FTEs do not exist at MDT. The work required of the consultants will be to produce two defensible documents that will almost certainly conflict with each other if this bill moves forward as presently written.
15. Assuming the above the annual cost of new EISs and EAs is approximately $750,000 + $300,000 = $1,050,000. Approximately 50% of that figure is $500,000 per year impact to MDT. This is an estimate because there are many unknowns about the way this bill and other regarding MEPA will be applied. The important message in this fiscal note is there will be impacts to the MDT program. These impacts will result from a conflict between MEPA and NEPA, the conflicts will be centered on the different requirements of the two laws and the courts will over time determine the exact extent of the impacts.

Department of Fish, Wildlife and Parks

12. The department assumes that the changes identified in this bill apply only to EISs and not to EAs.
13. The department will absorb any additional costs due to these changes on all future EIS within existing authority.

FISCAL IMPACT:

Department of Environmental Quality

	FY2002 Difference	FY2003 Difference
Expenditures:		
Operating Expenses	$10,000	$10,000
Funding:		
State Special Revenue (02)	$10,000	$10,000
Revenues:		
State Special Revenue (02)	$10,000	$10,000
Net Impact to Fund Balance (Revenue minus Expenditure):		
State Special Revenue (02)	0	0

Department of Transportation

Expenditures:		
Operating Expenses	$500,000	$500,000
Funding:		
State Special Revenue (02)	65,000	35,000
Federal Special Revenue (03)	435,000	435,000
TOTAL	$500,000	$500,000
Revenues:		
Federal Special Revenue (03)	$435,000	$435,000
Net Impact to Fund Balance (Revenue minus Expenditure):		
State Special Revenue (02)	($65,000)	($65,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
There might be project delays over and above normal experienced delays.

LONG-RANGE IMPACTS:
No long range impact other than possible confusion over doing two environmental analysis documents for the same project.

TECHNICAL NOTES:

Department of Environmental Quality

1. Section 1(1)(b)(iv)(C)(III) provides for a review of the agency's alternative determination. It does not toll the decision deadline contained in many permitting statutes. This may preclude a meaningful appeal because the agency will need to proceed with the drafting of the EIS before the appeal is concluded.

REP. KASTEN professed that the bill will clarify many of the types of questions that have been raised during the hearing. He stated that it is a process.

HEARING ON 459

Sponsor: REP. DOUG MOOD, HD 58, Seeley Lake

Proponents:
John Bloomquist, MT Stockgrowers
Frank Crowley, ASARCO
Paul Buckley, Golden Sunlight Mine
Cary Hegreberg, MT Wood Products Association
Mike Collins, Self
Bruce Vincent, League of Rural Voters
Rick Jordan, Self
Ed Regan, RY Timber
Don Serba, Pulp and Paper Workers
Kim Liles, Pulp and Paper Workers
Ken Mesaros, Self
Peggy Trenk, MT Association of Relators
Byron Roberts, MT Building Industry Association
Aidan Myhre, MT Chamber of Commerce
Charles Brooks, Billings Chamber of Commerce
Russ Ritter, Washington Corporation
Gail Abercrombie, MT Petroleum Association
John Semple, MT Cattlewoman
John Youngberg, MT Farm Bureau
Mike Murphy, MT Water Resource Association
Don Allen, WETA
Jim Mockler, MT Coal Council
Pat Keim, BNSF

Opponents:
Anne Hedges, MEIC
Larry Campbell, Self
Janet Ellis, MT Audubon
John Wilson, MT Trout Unlimited
Sherm Janke, Self
Julia Page, Northern Plaines Resource Council
Jeff Barber, MT Wildlife Federation, MT Chapter of the American Fishery Society,
Betty Whiting, MT Association of Churches
Jim Sweaney, Self

Wade Sikorski, Self
Bill LaCroy, Third Growth Native Plants
Doug Soehren, Self
Paul Roos, Self

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, read aloud from the document put together by the MEPA interim subcommittee. He explained that when MEPA passed, the intent was economic development of the state. MEPA is a mirror of NEPA. He stated that problems accrued from a lack of definition in the law. He charged that MEPA is a good philosophy, but good philosophy does not necessarily equal good law. The bill attempts to provide direction to the agencies for studies conducted under the MEPA law. The language in the bill provides structure and affirms the manner in which the legislature wants agencies to conduct MEPA studies. He stated that it is important to know the alternatives and their impacts. Page two points out that it is mandatory to study economic advantages and disadvantages. The language balances information from the agency to the project sponsor. If you have negative analysis there has to be positive analysis presented along with it. He charged that during the House debate it was obvious that people did not understand the MEPA process. They did not realize that the project sponsor is involved intimately in the process. However, the language is not exclusive to the project sponsor. He stated that MEPA is not an end in itself, it is a study. The bill clarifies that.

{Tape : 1; Side : B}

Proponents' Testimony:

John Bloomquist, MT Stockgrowers, charged that during the MEPA process it is important to clarify alternatives. He stated that MEPA lacks definition. The bill establishes alternatives and sideboards. It provides for an effective review process and consultation. He argued that the bill establishes the need for full analysis in an EIS. He stated that the bill has a light impact on MEPA.

Frank Crowley, ASARCO, handed out a letter from **Douglas Parker, ASARCO, EXHIBIT(nas56a03)**. He stated that the bill provides reasonable alternatives that are technically feasible. He referenced the letter by **Mr. Parker**, and pointed out the money wasted on studies that have no pertinent meaning.

Paul Buckley, Golden Sunlight Mine, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas56a04)**. He asked that his testimony be applied to HB 459 and HB 473.

Cary Hegreberg, MT Wood Products Association, expressed his support for the bill because it establishes necessary parameters around MEPA. He questioned how many lawsuits are necessary before a review can take place. He charged that now is a good time to revisit the law. He handed out a packet of economic information and lawsuit examples **EXHIBIT(nas56a05)**. He pointed out to the committee certain lawsuits that have had a devastating impact on Montana. He stated that millions of dollars could have been generated for school trust lands, but lawsuits have stopped that. He argued that timber sales cannot take place because of problematic lawsuits. In the past ten years the Swan State Forest has forgone a sustainable harvest of approximately 92 million board feet. In terms of a dollar amount that is 18 million dollars to the school trust and a loss of 185 jobs annually. He stated that the DNRC cannot sell timber because of a couple of lawsuits that opponents say are not a problem. He speculated that harvesting dead and dying timber would have positive impacts down the road. Not managing the state forest lands led to numerous fires. It is important to look at the possible impacts.

Mike Collins, Representing himself, informed the committee that he is a small mine owner. He asserted that MEPA has created a process that does not allow for mistakes. He urged the committee to pass the bill because it would contribute to employment in the state.

Bruce Vincent, League of Rural Voters, spoke in favor of the bill and submitted written testimony along with a petition signed by the League of Rural Voters **EXHIBIT(nas56a06)**.

Rick Jordan, Representing himself, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas56a07)**.

{Tape : 2; Side : A}

Ed Regan, RY Timber, recounted for the committee a lawsuit that incurred due to MEPA. As a result of the lawsuit RY Timber lost the entire Black Tail timber sale. He declared that the lawsuit was not filed until eight months into the sale.

Don Serba, Pulp and Paper Workers, charged that the proposed changes do not weaken MEPA. He stated that it is time to revise MEPA for the future of Montana's economy.

Kim Liles, Pulp and Paper Workers, stated that nothing is forever, it's time to revise MEPA.

Ken Mesares, Representing himself, declared that the bill does not weaken the protection of the environment. It does not curtail public involvement and it retains the look before you leap policy. The bill creates a necessary balance. He stated that the subcommittee recognized that more definitions are necessary in order to make this an effective process.

Peggy Trenk, MT Relators Association, informed the committee that major subdivisions fall under MEPA. If the MEPA process was applied to housing developments the cost of housing would increase.

Byron Roberts, MT Building Industry Association, stated that construction is one of the largest industries in the state. He urged the committee to support the changes to the bill.

Aidan Myhre, MT Chamber of Commerce, expressed their support for the bill.

Charles Brooks, Billings Chamber of Commerce, spoke in favor of the bill and submitted a document sighting the position of the chamber **EXHIBIT(nas56a08)** → exhibit unavailable

Russ Ritter, Washington Corporation, expressed his support for the bill and asked that his remarks apply to both HB 459 and HB 473.

Gail Abercrombie, MT Petroleum Association, spoke in favor of the bill.

John Semple, MT Cattlewoman, spoke in favor of the bill.

John Youngberg, MT Farm Bureau, spoke in favor of the bill.

Mike Murphy, MT Water Resources Association, spoke in favor of the bill.

Don Allen, WETA, spoke in favor of the bill.

Jim Mockler, MT Coal Council, spoke in favor of the bill.

Pat Keim, BNSF, spoke in favor of the bill.

Opponents' Testimony:

Anne Hedges, MEIC, declared that she agreed with 95% of the bill, even if it is narrow. She charged that the bill makes it difficult for an agency to do their job and stay out of court. She stated that the EPA has spent 19 million dollars in Libby. They still need 14 million dollars just for this year. Numerous mines have cost the state millions of dollars in liability. She argued that the main problem with the bill was on page two, line seven. She warned that the phrase "economically feasible" has the potential to get the state into trouble. She proclaimed that the state cannot determine the definition of economically feasible. The bill forces the project sponsor into a bad position.

Larry Campbell, Representing himself, declared that the Sula State Forest has been managed without any appeals or litigation. He said that the state managed the forest and a greater percentage of that forest burned during the fires of 2000. He hypothesized that it burned because of the improper disposal of slash when loggers harvested the forest. He charged that the current carpet of slash in the Sula State Forest is setting the state up to incur a large cost in the future.

Janet Ellis, Audubon, spoke in opposition to the bill and submitted written testimony **EXHIBIT(nas56a09)**.

John Wilson, MT Trout Unlimited, professed that he had a problem with the language on page five. He argued that the language makes each school district a project sponsor. He said that it gives the school the ability to request a review of each alternative proposed in an EA or EIS. He added that this would cause delays in the permitting process and create a system of chaos. He argued that it places the school district against the environment.

Sherm Janke, Representing himself, questioned who pays under the bill. He stated that the project sponsor can protest and the state will end up picking up the tab. He said if the sponsor cannot afford the analysis then fewer alternatives will be available.

{Tape : 2; Side : B}

Julia Page, Northern Plaines Resource Council, stated that the bill complicates MEPA, adds more time to the process, cost more taxpayer money and sets up a subjective standard for what alternatives should be considered in the analysis. She argued that the term economically feasible is relative and the bill does not provide a definition. That allows the project sponsor to determine that any alternative is economically unfeasible. The bill is bad because it sets up a subjective standard.

Jeff Barber, MT Wildlife Federation, MT Chapter of the American Fishery Society, charged that the lack of definition for economically feasible is harmful. If the language was removed there would be no problem with the bill. He stated that more analysis would be meaningful for the process.

Betty Whiting, MT Association of Churches, charged that the bill throws MEPA out of balance by placing an emphasis on economic feasibility. She urged the committee to keep creation beautiful. She commented on the groups belief that technology does exist and can be developed in a way that would allow industry to work in the state and still protect the quality of the environment.

Jim Sweaney, Representing himself, urged the committee to kill the bill.

Wade Sikorski, Representing himself, urged the committee to vote against the bill. He proclaimed that states with the strictest environmental protection have the highest growth rates and the least amount of unemployment.

Bill LaCroy, Third Growth Native Plants, stated that there is not an accounting system adequate in the bill. The bill does not convince him that it supports future generations.

Doug Soehren, Representing himself, informed the committee that he has been working with a group to help protect the Bitteroot. He charged that MEPA has never been used to hinder or slow down timber sales. He claimed that the MEPA study showed that there was no need for changes.

Paul Roos, Representing himself, expressed his concern that the language would make the situation worse.

<u>Informational Testimony</u>:

Haley Beaudry, Professional Engineer, informed the committee that he has studied, performed and conducted economic evaluations. He

stated that there is a science of economics and a way to evaluate it effectively.

SEN. BEA MCCARTHY, SD 29, Anaconda, stated that she was the Chair for the MEPA interim subcommittee. She said that the issue was throughly discussed by the committee, but they felt this issue could not be decided by only seven people. She declared that the bill is a part of that study.

Mary Westwood, Representing herself, stated that she was concerned with economically feasible. She was troubled with the need to get into the books of a company. She warned that exposing a companies economics creates competition problems.

Questions from Committee Members and Responses:

SEN. MCCARTHY asked **REP. MOOD** if there was a fiscal note attached to the bill. He informed her that yes there was.

SEN. COCCHIARELLA asked **REP. Mood** for a definition of three terms in order to understand the bill, economically feasible, due weight and consideration and reasonable. **REP. MOOD** told her that alternatives are not written in a vacuum. Not everyone has input, including the project sponsor. He stated, for example, when a mine applies for a permit they go through an extensive process to see if the project is something that makes sense or is economically feasible. The term economically feasible is different depending on who is applying for the permit. He stated that if the project is not economically feasible then there has to be a no action alternative. He read aloud from the rules that state the agency must be aware of all realistic alternatives. **SEN. COCCHIARELLA** asked if reasonable was only defined by the project sponsor. He told her that just because an alternative is available, it may not be reasonable.

{Tape : 3; Side : A}

SEN. MIKE TAYLOR asked **John North, Chief Legal Council for the DEQ**, if economically feasible was not defined would that create a problem for the department. **Mr. North** told him that the given language would force them to hire an outside entity to examine the economics of a situation. He added that any clarity to the language would help.

SEN. GROSFIELD questioned if the word appeal needed to be changed. **Michael Kakuk** informed him that the word appeal should be review.

SEN. GROSFIELD asked if the word "institutional" would exempt each school district from becoming a project sponsor. **REP. MOOD** stated that the language clarifies that the trusts being referred to were the school trusts. He stated that under current law a school district can appeal a MEPA document. **SEN. GROSFIELD** inquired why the House chose not to further define that term. **REP. MOOD** declared that in the fiscal note the DEQ stated that they would contract for approximately $5,000 per project and an estimated two EIS' per year. They would contract with an outside firm, and that firm would be responsible for the economic balances.

SEN. BILL TASH asked **Mr. North** if better language for the bill would be cost benefit analysis. **Mr. North** informed him that that was a different concept.

SEN. GLENN ROUSH inquired if the sponsor would agree to an amendment that would define the term economically feasible. **REP. MOOD** told him that the term was not a major problem. He did not want to complicate the matter further by adding unnecessary language.

SEN. KEN TOOLE questioned the impact the bill would have on business. **Mr. Ritter** told him that business is a daily risk. It is easier to operate using hindsight, but that is not possible. **SEN. TOOLE** asked if reform of MEPA even begins to rise to the level of other business issues. **Mr. Ritter** stated that MEPA reform has nothing to do with the immediate problem, but it will help the long term.

SEN. TOOLE inquired if an economic analysis of a no action alternative is conducted, is there a concern that it will include potential for coming back and doing the proposed action later. He questioned if that was the intent of thorough analysis. **REP. MOOD** stated that could be a part of a no action alternative, but historically that has not been the case. He charged that the intent is to not only focus on the negative aspects of a project, but the positive as well. **SEN. TOOLE** asked what were the underlying substantive laws. **REP. MOOD** told him that the main one's are the clean air and clean water acts. **SEN. TOOLE** wondered if they were adopted before MEPA. **REP. MOOD** told him it was after. **SEN. TOOLE** asked if when MEPA was adopted if it's intent was to be procedural in implementing other environmental laws, considering those laws were adopted after the fact. **REP. MOOD** proclaimed that MEPA and NEPA are essentially mirror images. They are both a result of DDT use. All the information about DDT and it's affects was available to the federal government, all

they had to do was look at it. He charged that we are at the end of the Industrial Revolution. It is time to change the laws and make them appropriate for the Information Age. Many of the laws enacted during that time are inappropriate for today's economic environment.

SEN. GROSFIELD asked how **Ms Hedges** would better define economically feasible. **Ms Hedges** charged that the model rules are working. She questioned what needs to be fixed. She stated that it is important to have clear examples. She asked for a specific example of when an agency conducted a study and ignored the economics of it. The language will limit certain alternatives studied. She claimed that agencies already do what the bill suggests.

SEN. GROSFIELD inquired when this similar concept was debated before. **Mr. North** told him that he did not remember that particular debate.

SEN. GROSFIELD questioned agencies looking too far into a project sponsor's financial records. **REP. MOOD** professed that was not a concern. The agencies already have the means to determine the economics of a project sponsor.

{Tape : 3; Side : B}

SEN. COCCHIARELLA asked what the intent of the legislation was. She stated that opponents to the bill were bothered by the term economically feasible. She questioned protecting the books of a company. She inquired if there is an economic test who decides what is revealed. **REP. MOOD** proclaimed that companies send their financial statements into companies like Dunn and Broadstreet to be analyzed. The project sponsor works closely with the agencies when they apply for a permit. **SEN. COCCHIARELLA** asked what if the agency is underfunded. Would he make a commitment to fund these agencies in order to make the bill work. **REP. MOOD** charged that the proposed changes to MEPA would make the agencies task easier.

SEN. KEN MILLER questioned a comment made by **Mr. Barber** that if economically feasible were to affect the taxpayer then Zortman Landusky would not have happened. He asked how much of the tax dollars have been spent on Zortman Landusky. **Mr. Barber** stated that $15 million has been spent on the clean-up. **SEN. MILLER** questioned if that was tax dollars. **Mr. Barber** told him that tax dollars have not been spent, but they will need to spend that much money. **SEN. MILLER** questioned what taxing entity would have

to pay the bill. **Mr. Barber** told him it would be the government. **SEN. MILLER** asked if one of the sources paying for the clean-up would be the hard rock mining tax. **Mr. Barber** told him that could be a possible source. **SEN. MILLER** asked him to justify his statement, when in fact the general taxpayer will not have to pay for the clean-up of the mine. **Mr. Barber** stated that it has not been settled as to who will pay for the clean-up.

Closing by Sponsor:

REP. MOOD stated that MEPA has been in place for thirty years. He charged that the legislature is here to fiddle with laws. They modernize and update them. He declared that after thirty years it is now possible to identify the areas that need work within MEPA. The changes that have been proposed clarify existing law. If a person was to drive into a state that does not have environmental laws a person could not tell the difference. He charged that private entities are able to make money off of timber sales because they have not been saddled by procedural laws. He gave an example of wanting to put Grass Carps into a golf course pond, the result was a lengthy environmental study. He stated that lawsuits have created large excessive studies. The Montana economy has declined since 1965. He questioned if MEPA is the key to economic development in Montana then why has that trend not reversed in thirty years.

HEARING ON HB 473

Sponsor: REP. CINDY YOUNKIN, HD 28, Bozeman

Proponents:
John Youngberg, MT Farm Bureau
Kim Liles, Pulp and Paper Workers
Don Serba, Pulp and Paper Workers
Ed Regan, RY Timber
Tammy Johnson, League of Rural Voters
Patrick Heffernan, MT Logging Association
Dave Skinner, Self
Cary Hegreberg, MT Wood Products Association
Russ Ritter, MT Resources and Open Pitt Mine
Ken Mesaros, Representing Himself
Pat Keim, BNSF
John Bloomquist, MT Stockgrowers
Ronald Buntemeier, F.H. Stoltz Land and Lumber Co.
Mike Murphy, MT Water Resources Association
Peggy Trenk, MT Association of Relators
Aiden Myhre, MT Chamber of Commerce

ASARCO

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3/12/01
BILL NO. HB 459

March 12, 2001

RE: HB 459

Senator Crismore and Members of the Senate Natural Resources Committee;

This letter is offered in support of HB 459 and the legislature's attempts to make needed revisions to Montana's MEPA law. Clarification of the range of alternative evaluated under MEPA such that they are reasonable, technologically achievable and economically feasible makes good sense. It is also important to provide a meaningful assessment of the no action alternative particularly as to the social and economic effects of no action.

In over 15 years working on the Rock Creek Mine Project, formerly owned by Asarco, we have seen an enormous amount of time and money wasted on analysis of peripheral issues that have little or no bearing on permit decisions. We have seen DEQ's economist state that natural resource jobs (such as mining associated with the 30 year life of the Rock Creek Mine) are not good for the local economy. We have seen new issues and new "endangered species" come to the fore over the years as new species are added to the lists. Including a Forest Service "sensitive" plant that although not recorded in the original vegetation study had to be re-evaluated (and still not found) because it hadn't specifically been included in the list of plants to be searched for some ten or twelve years earlier. We have seen DEQ project managers come and go. However, we have not seen an end to the process.

Thank you for your consideration of this bill.

Sincerely,

Douglas C Parker
ASARCO Incorporated

ASARCO Incorporated, 127 E. Main; #210, Missoula, MT 59802
(406) 728-8510
Fax No: (406) 728-3512

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3/12/01
BILL NO. HB 459

TESTIMONY SUPPORTING

REPRESENTITIVE MOOD HOUSE BILL 459

PAUL BUCKLEY

3006 MAMMOTH DR.

BUTTE, MT 59701

Mr. Chairman, Members of the Committee, Representative Mood. My name is Paul Buckley. I live in Butte and am employed by Golden Sunlight Mines.

It is my observation that current regulatory requirements imposed on industry in Montana have more to do with the legal interpretation of laws and statutes and less with actual environmental impacts. This has resulted in increase costs and delays for businesses with no benefit to the environment. However, it has had a very negative impact on the income and economic well being of the citizens of Montana.

I would like to give you an example. My employer, Golden Sunlight Mines, paid 17.7 million dollars in wages and benefits last year, mine included. In fact, since the mine opened in 1982 they have paid more than 205 million dollars in wages and benefits.

That's 205 million dollars that individuals paid taxes on, spent in our restaurants, purchased new cars and trucks with, bought their children's school cloths with, paid the mortgage payment with, spent on vacation, and money that paid the college tuition.

In the decade of the 90's, the mine spent nearly 270 million dollars buying goods and services. Again, those businesses paid employees who paid their taxes, bought the ticket for the show, purchased a new appliance, bought the hunting and fishing license, bought the Christmas presents and added a deck on the back of the house.

Last year alone, Golden Sunlight paid $875,000 dollars in taxes to the county and overall Golden Sunlight has paid 15 million dollars in production taxes. Those taxes paid the salaries of the sheriff deputies who paid their taxes. That money paid for the clerk in our district court who hired the babysitter who both paid their taxes, funded our schools who paid the teachers who paid their taxes, paid the man to run the road grader who paid his taxes and on and on.

Well, the economy of Montana is falling down and that necessary sequence of our economy is breaking up. Montana Resources employees are out of work. So are American Timber workers, the Asarco smelter workers, the Columbia Falls Aluminum workers, Diamond Hill Mine workers and there are less workers at places like Stone Container, Owens and Hurst, and soon workers will be losing their jobs at Pyramid Mountain Lumber and Golden Sunlight Mines.

The issue is not to change the environmental standards in Montana, but rather to make administration of those standards efficient and timely so that resource based industries can continue to provide well paid jobs for the citizens of Montana. Jobs that are essential for development of an improving economy in Montana.

We have got to rebuild Montana. This will help. Please support this bill.

Thank you,

Paul Buckley
3006 Mammoth Dr.
Butte, MT 59701

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 3/12/01
BILL NO. HB 469

TABLE 4.11 *Estimated Net Dollar Revenue of the Alternatives*

Alternative	Gross Revenue	Treatment Cost	MEPA Cost	Sale Prep & Admin Cost	Net Revenue
A	0	0.00	308,508.41	0	-308,508
B	1,530,580	44,136.80	308,508.41	132,362.94	1,045,572
C	-12,863	12,146.88	308,508.41	2,739.38	-336,257
D	1,690,032	62,911.09	308,508.41	102,836.13	1,215,776
R	434,188	33,039	308,508.41	125,658	-33,017

B. Estimating the Value of a Conservation Lease

A conservation lease would exclude timber harvesting from the project area for twenty years. Bids for conservation leases and timber sales will be compared to determine which would generate more income for the school trust. To compare timber sale and conservation lease bids, the value of the timber that would not be harvested would be considered because that timber could be sold after 20 years. A conservation lease (CL) bid would be compared to timber sale bids as follows:

CL Bid + discounted value for same timber sale in 20 years = total value of CL.

The discounted value of the same timber sale in twenty years would be added to the bid value for the conservation lease. The total value for the conservation lease would be compared to the highest timber sale bid, and the highest bid would win. This method of comparing bids assumes that the cost of preparing and administering a timber sale running approximately three years is the same as the cost of administering a conservation agreement over 20 years.

The discounted value of the timber sale in 20 years was estimated based on the following assumptions: (a) Stumpage values will increase at a real rate of 2.789 percent annually (Table 4.12); (b) Costs for MEPA process and documentation, and sale preparation and administration will increase at an annual rate of 3.0 percent (Table 4.13); © The real discount rate is 4.01 percent (Table 4.15); (d) Timber stands will exhibit zero net growth; and (e) There will be no opportunity cost for delaying the establishment of future stands.

SWAN RIVER STATE FOREST **DNRC**

Memo

To: Tom Schultz

From: Dan Roberson

CC: Bob Sandman

Date: 02/09/01

Re: Volume from the Swan over the past decade

Hi Tom

I went through old files, talked to Steve and Dan Hall to get some idea of how litigation and policy played a role in the ups and downs of timber volume on the Swan. This was done really quickly and may have some errors, but I think its 98% correct. Years are fiscal years.

1989 the Swan (SRSF) Sold New Squeezer Timber Sale 3219 MBF

Dan Hall said this sale was threatened with litigation by the FOWS

SRSF sold 9 permits for 1122 MBF

Total 1989 volume **4341 MBF**

1990-1991 the SRSF was litigated by the FOWS to produce a Programmatic Forest Plan DNRC won that case but no major timber sales were produced. If we would have lost this case it would of resulted in an individual forest plan and a likely long drawn out MEPA process.

Over the two-year period SRSF sold 19 permits for **Total 1990-1991 volume** **2134 MBF**

1992 SRSF sold Woodward Face Timber Sale 2710MBF
This sale was also threatened by the FOWS but they did not pursue litigation, but threats of litigation lengthen the MEPA process, as you know.

SRSF sold 3 permits for 190 MBF
Dan mentioned that they were so busy doing MEPA on Woodward Face that they had little time to put up any permits.

Total 1992 volume **2900 MBF**

1993 SRSF sold Porcupine Creek Blowdown Timber Sale 250MBF

SRSF sold 5 permits for 10 MBF

Total 1993 volume **260 MBF** 260,000

1994 SRSF sold Middle Soup (EA) Timber Sale Logged 79MBF
Litigated by the FOWS 1993-1994 won and stopped sale court ruled MEPA not applied appropriately

SRSF sold 4 permits for 14 MBF
About this time Dave Remington produced a memo that recommended all salvage harvesting stop in old growth on SRSF. We looked for a copy of that memo and could not find, but it is here somewhere, both Steve and Dan Hall remember the memo and how it put a stop to salvage harvesting in old Growth.

Total 1994 volume **83 MBF**

1995 SRSF begins production of Middle Soup EIS 0 MBF

SRSF sold 2 permits for 1 MBF

Total 1995 volume **1 MBF**

1996 SRSF Works hard to produce Middle Soup and S. Lost EISs and does not sell any volume.

Total 1996 volume **0 MBF**

1997 SRSF sells Middle Soup Creek (EIS) Timber Sale 0MBF
DNRC is promptly litigated by the FOWS from 1997-2000 stopped sale and court ruled MEPA not applied appropriately. SRSF works hard to produce South Lost and Cilly Creek EISs.

SRSF sold 1 permit for 176 MBF
For the widening of HWY 83 DOT does MEPA

Total 1997 volume **176 MBF**

1998 Ongoing Mid Soup Litigation. Cilly creek EIS dropped due to new SFLMP biodiversity and old growth guidance. Work on South Lost EIS continues. 0 MBF

SRSF sold no permits for 0 MBF

Total 1998 volume **0 MBF**

1999 Ongoing Mid Soup litigation. South Lost dropped: fails to meet SVGBCA timelines due to gridlock internally about old growth and gridlock externally with USFS FRTA process and USFWS consultation concerning bull trout. DNRC accused of being pre-decisional because trees were painted before formal decision by the decision-maker.

0 MBF

SRSF sold 2 permits for 200 MBF

Total 1999 volume **200 MBF**

2000 SRSF changes strategies concerning MEPA. Uses EA check lists with no intent to stand judicial review. Projects are kept small so that environmental groups are less likely to litigate. If litigation was to occur projects may be dropped easier. SRSF produces Small Squeezer 1 & 2. The disadvantage of small timber sales is that you cannot maintain infrastructure. 1000 MBF

SRSF sold 12 permits for 2000 MBF

Total 2000 volume **3000 MBF**

2001 SRSF is back into preparation of large sales to maintain its infrastructure. Because of the time to prepare a large EIS that can stand legal review SRSF expects to sell no large sales this year.

0 MBF

SRSF expects to sell 10 permits for 800 MBF

Total 2001 volume **800 MBF**

2002 Under present SFLMP guidance, SRSF intends to produce two large sales. Both will have large EISs and are expected to bring legal challenge with resulting delays pushing SVGBCA windows

12000 MBF

SRSF expects to sell 10 permits for 1000 MBF

Total 2002 volume **13000 MBF**

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3/12/01
BILL NO. HB 459

The League of Rural Voters, Inc.

Testimony of Bruce Vincent, League of Rural Voters
Before the Senate Natural Resource Committee on March 12, 2001
On HB 459

Mr. Chairman, Members of the Committee, Representative Mood, thank you for the opportunity to appear before you today.

HB 459 will clarify the environmental analysis of alternatives to proposed actions. It will assure that alternatives must be reasonable using current technology and must be economically feasible for the project sponsor. It will assure that the agency must confer with the permittee about proposed alternatives and give consideration to the perimittee's comments. It will put into place a review process for questions regarding the reasonableness of the alternative and direct the agency to complete a meaningful no-action alternative that would include environmental, social and economic impacts of the project's noncompletion.

It will require an analysis to include details of beneficial aspects of the proposed project, both short and long term and the economic advantages and disadvantages of the proposal.

For help in considering why these modernizations of MEPA are necessary, I offer the following analogy. Let's assume that a local school board, let's use Libby, is pondering whether or not to purchase a van to carry the Libby Logger speech and debate team to and from their events.

The board would undoubtedly do some scoping to determine what information would be necessary in making an informed decision about whether or not to purchase and, if a purchase were going to be made, what options would be desired. It is likely that a purchasing committee would be formed to gather necessary information so that the board could make its decision.

The process of determining whether or not to purchase a van would include the gathering of information on the negative aspects of such a purchase (purchase costs, maintenance costs, insurance costs, contribution of emissions to our air shed, contribution to the energy needs and necessary energy production needs of society as a whole, the potential liability of school children being hurt while travelling in the van, etc.) Information on the positive side of such a purchase would also weigh on their final decision: comparing the cost of purchase to the price paid for single vehicle transportation, the opportunity costs of not being able to attend certain functions because of a lack of reasonable transportation, the positive environmental benefits of one vehicle travelling to and from a site as opposed to six, the safety of a single, heavily regulated, public transport van compared to multiple, common passenger vehicles, etc.)

The information desired by the decision making board would likely have some definite parameters concerning viability. For instance, the board would want information on potential alternatives that were technologically possible. Some in the debate team may think it would be cool if the team could have a 'flying van' or a 'teleporting' system like on Star Trek...but technology does not offer that model yet and the board would probably not entertain such a notion as an alternative. Similarly, even though it would be way cool to have a Boeing 737 carry the team from locale to locale, the budget of the proposed purchase probably invalidates that alternative.

P.O. Box 1008 Whitehall, MT 59759 (406) 287-3012 www.ruralvoters.org

The board would also use a great deal of information gathered specifically concerning the positive and negative aspects of not purchasing a van. The information gathering would not stop at just the bad aspects of a purchase, it would continue to include the potential benefits of a purchase.

Finally, when all of the information was gathered, the board would deliberate its decision. All of the reasonable alternatives, including the positive and negative of each and certainly including the positive and negative of not purchasing at all, would be reviewed. Included in the final analysis of each alternative would probably be some economic information concerning the cost of the purchase and whether or not the alternative was locally available. The positive impacts of choosing a local supplier (local good will, local economy and local tax base) would play into any final decision.

I offer this analogy as an example because it fits every day life – and the MEPA process is one that most citizens never have to grapple with. A similar process is used by every person in this room when they make decisions involving the purchase of a personal vehicle, a house or which college to send children to.

If a process similar to the existing MEPA process were used in the school van analogy, the school board would be poised to make an ill-informed decision. Information would be gathered that concentrates on the negative aspects of the purchase (gas costs, potential injury and liability, long term depreciation, etc.), could include some alternatives that are not possible technologically (beam me up Scotty?) or fiscally (let's build a separate highway just for the Libby Logger van to cut down on the potential of hitting another vehicle…); the healthy discussion of the pros and cons of not purchasing a vehicle at all would be avoided and the school board would be asked to pick from among a host of alternatives that they had had very, very little input into during the information gathering process.

By the way, if the existing MEPA process were used to make such decisions, I'm afraid the Libby School Board would still be discussing the purchase of a 1989 van in 2001 and if the supplier had to undergo MEPA analysis before offering such a vehicle the final decision would probably be to purchase the van in Idaho where the safety standards for such a vehicle are the same, but the process of purchasing it wouldn't take ten years.

This bill is a great bill for Montana working families and those that are charged with the making the decisions surrounding our environment. This legislation will make the environmental review process more efficient and equitable. Alternatives to the project sponsor's plan should be reasonable.

We must begin to look at impacts in the positive as well as the negative. For too long, the positive impacts of a proposed project have not received the attention they are deserving of. If a proposed project will be in full compliance with all environmental laws and regulations and will create jobs, enhance the tax base and provide other benefits to the community, county and state, surely it is worthy of review and analysis.

Finally, I'd like to point out that Montana is near the bottom in family income. We all know this. We also know that modernizing MEPA will not turn things around over night. However, this bill will help us move in a direction that may help businesses decide to stay or to move here and employ Montana families.

Certainly, when we gather information on the impact of a potential project, the positive impact of family wage jobs in areas like Thompson Falls - where their School Superintendent testified that 60 percent of the students receive federally subsidized lunches – should be considered.

The positive impact of removing fuel loading from an overstocked area of states forested lands should be considered.

The positive impact of an economy strong enough to allow us to pay competitive wages to our school teachers or to upgrade our sewage treatment facilities to meet modern water quality standards should be considered.

In fact, the positive impact of providing for humankind in our regulated society as opposed to providing for our needs from developing countries that are long on resources, long on population growth, burdened with poverty and short on cash and the ability to be environmentally sensitive should also be considered.

For now, however, it just makes good sense to modernize the MEPA process of gathering information and providing alternatives for the decisions we make in the places we call home. Thinking globally and acting locally is probably to big a leap to make all at once.

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Joe Gauthier	214 4th Ave NW	Cut Bank MT, 59427
Bob Mullen	Box 395	Helena, MT 6945[illegible]
Earl Barker	RT 1 Box 56	Moore, MT 59464
Ray Baker	#1 Baker Trail	Stanford MT 59479
Joyce Baker	#1 Baker Trail	Stanford MT 59479
Sam Graham	324 N. 18th	Bozeman, MT 59715
[illegible]	Box 1486	WITSH MT 59937

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Patty Burns	PO BOX 1510 BIG TIMBER	59011
David Lichte	519 S. 9 Livingston ~~59047~~	59047
Doug Hanson	2501 Westridge Dr. Bozeman, MT 59715	→
Dave Kreveler	5100 Hwy 1 west Anaconda	→
John Esp	Box 1024 Big Timber 59011	
Jerry Furtney	P.O Box 98 1	Townsend, MT 59644
Joyce Johnson TRIBALS	20 REDWOOD	BUTTE MT 59701
Rory TRIBALS	20 REDWOOD	BUTTE, MT 59701
Myrl DeBruycker	2500 Bailey Rd	Florence 59440
Roger DeBruycker	2500 Bailey Rd	Florence 59440
Darrell Wells	P.O. Box 125	Clancy, Mt 59634
Jim Mockler	2301 Colonial Dr	Helena 59601
Carol Mosher	Two Bar Ranch	Augusta 59410
Roland Mosher	" "	Augusta 59410
Gary Marks	Clancy MT 59634	
Kaylynn Miller	167 Sedale Mtn Clancy MT 59634	
Jay Harvey	6065a HWY 93 Bozeman MT 59715	
[illegible]	5145 Hwy 93 S [illegible]	Missoula MT 59804

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Cynthia Hoover	Box 67	Rexford MT 59930
Jessie Anderson	Box 500	Eureka MT 59917
Tom Jones	315 Paxson	Butte MT 59701
Scott Mendenhall	PO Box 1079	Whitefish 59937

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Colli Sny	PO Bx 248	Libby mt 59923

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
FRED JANICKE	1308 2ND AVE NW	GT FALLS MT 59404
Jack Mahon	124 N. Walnut	Townsend MT
JAN & RON HARTMAN	P.O. Box 39	WILSALL, MT 59086
GENE NELSON	3926 Bellecrest	Missoula 59801
Beth Enter	29 Hidden Valley	Clancy MT 59634
Marbeth Woods	5300 Hwy 2, S.	Libby MT 59923
Claude Woods	" " "	" " "
Carol Guzman	237 Canfield Rd	Libby, MT 59923
David & Sacha	13333 Hubbard Rd	Mis/ MT 59802
Carrie Cuilli	430 Sheldon Ln	Libby MT 59923
Marvin Mead	5490 Green Meadow	Helena, Mt. 59602
Ed Regan	129 N. Cherry St.	Townsend MT 59644
[illegible]	Box 1557	Kalispell, MT 59903
[illegible]	Box 1557 HELENA MT	Kalispell, MT 59903
John Semple	1819 FLOWERREE	Helena, MT 59601

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Jason Todhunter	PO Box 221	Harlowton, MT 59036
Chuck Sammelson	127 Lake Hills Ct	Big Sandy MT 59911
Steve Nerschert	665 S. Davis	Helena MT 59601
Pat Jones	PO Box 224	Virginia City MT
Judy Jones	3115 Paxson	Butte, MT 59701
John Fitzgerald	818 Ninth Ave	Helena, MT
David Pratt	PO Box 248	Libby 59923
Cheryl Curtis	65 Robbins Rd	Libby 59923
Tim Crichton	430 Skeldon Lane	Libby
Lois Crouchen	65 Robbe Rd	Libby
Janice George	PO Box 334	Seeley Lake, MT 59868
Richard Grey	" " "	" " "
Gary L Chvilicek	7 Locust Loop	Bozeman 59715
Darrell Cooper	2100 Petty Rd	Alberton MT 59820
Austin Dillree	Hibbleton	Alberton MT 59820
Larry Dillree	Box 91	Ovando MT 59854
Ida Herzog	Box 689	W.S.S. MT 59645
Richard Hess	Box 166	W.S.S. MT 59645

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
David Boyles		Cut Bank, MT 59427
Cory Farmer	120 Manor Drive	Libby, MT 59923
Bryan Harris	5935 St. Francis Dr	Missoula, MT 59803
[illegible]	PO Box 389	Deer Lodge MT 59722
[illegible]	116 HARWOOD	HELENA, MT 59601
Mark Bu[illegible]	3219 1st Ave. N	Great Falls MT 59401
Don Serlin	216 Sentinel MSHA 59801	Mola, MT 59801
Sheila Keller	183 Fairmont Rd	Kalispell, MT 59901
Joe Keller	183 Fairmont	"
Julie Nistler	PO Box 1043	Townsend MT 59644
Patricia Watson	134 N Walnut	Townsend MT 59644
Ted Antonioli	5907 Longview	Missoula MT 59803
Delila Croucher	65 Robbs Rd Libby MT 59923	
Angela Jaracaro	202 S Harrison	Townsend 59644
Pam Langley	1806 Capitol	Helena, MT 59601

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 3/12/01
BILL NO. HB 459

TESTIMONY SUPPORTING

REPRESENTITIVE MOOD HOUSE BILL 459

RICK S. JORDAN

2425 HARVARD

BUTTE, MT 59701

Mr. Chairman, Members of the Committee, Representative Mood

My name is Rick Jordan and I am Mill Superintendent at the Golden Sunlight Mine. I strongly support House Bill 459. The Montana Environmental Policy Act (MEPA) was designed to create balance between industry and the environment. However, MEPA can also be used as a tool by special interest groups to thwart any and all natural resource-related projects. This bill will clarify MEPA's original intent.

Our regulatory agencies are made up of extremely capable scientists and engineers trained to study facts and data necessary in determining potential detrimental effects of proposed projects. Unfortunately, the permitting process has become so difficult and drawn out that obtaining an operating permit can take decades. This is illustrated by the following example:

Golden Sunlight was granted an operating permit for expansion after completing an environmental assessment (EA) in 1992. Several environmental organizations immediately challenged the permit by suing State regulatory agencies and Golden Sunlight. Even though regulatory agency personnel agreed with the Golden Sunlight operating plan and were satisfied with data presented in the EA, a Montana judge ruled that an environmental impact study (EIS) must be completed before a permit could be legally granted. The operating permit delay necessitated modifying Golden Sunlight's waste hauling schedule, thus increasing operating costs by over $1,200,000.

A draft EIS was published in November 1997 and the final document was completed in April 1998. During the public comment period, 289 written and oral comments were received in favor of the Golden Sunlight operating plan. Additional support included a petition containing 1,340 signatures. Only three opposing comments were received. The permit was not granted, however, until July 1998 as regulatory agencies took extra time in studying the document to make sure that there were not grounds for additional law suits. None-the-less, within 90 days the environmental organizations filed to continue the law suit.

Opponents of legislation designed to clarify MEPA argue that "only" 27 lawsuits have been filed since MEPA was enacted in 1971. The Golden Sunlight lawsuit is just one of those 27 lawsuits and has been ongoing since 1992.

Today's investor market is extremely competitive and investors expect a timely return on their investments. Montana's legacy of lengthy permitting studies does not encourage new business development by those industries that traditionally pay high salaries and offer decent benefit packages.

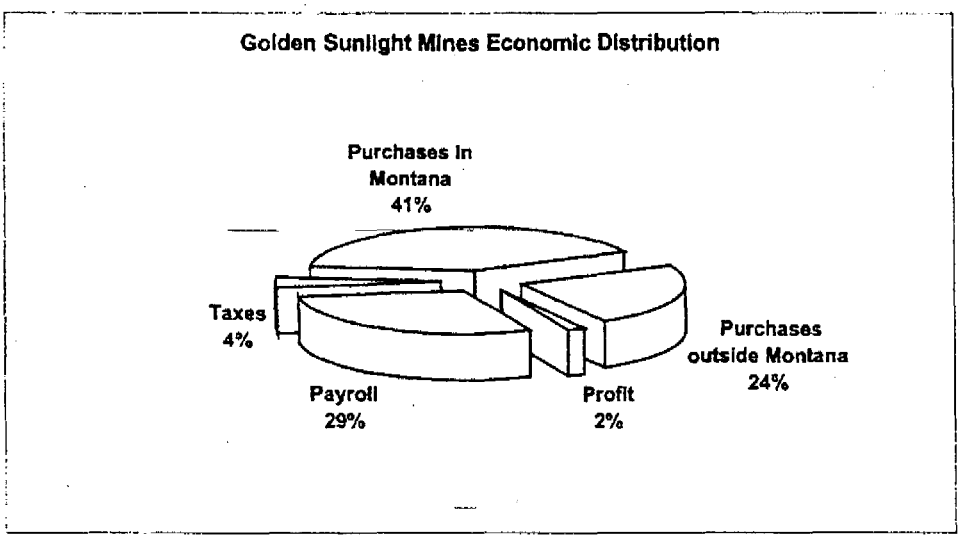
Should the permitting process, then, be only a token exercise with permits granted to all applicants? Certainly not. If MEPA is used as intended by it's authors, only those projects deemed suitable by Montana's regulatory agencies will be permitted. Laws already in place will guarantee environmental protection. Operators unwilling or unable to abide by those laws must be punished just as any other law breaker is punished.

Responsible operators will strive to use the latest and most effective feasible technologies to ensure the greatest means of environmental protection. As an example, in 1998, Golden Sunlight installed a cyanide destruction circuit requiring a capital outlay in excess of $2,400,000 and annual operating costs in the range of $595,000. This installation was not mandated by any State regulation. However, Golden Sunlight chose to install the circuit because the technology was proven effective and provided yet another means of guarding against adverse environmental impact.

Finally, I would like to comment on a statement included in a recent guest editorial written by one of Butte's representatives and published in the Montana Standard. This statement represents a common argument in the fight against the extractive industries. The representative wrote, "*Throughout Montana's first century, our Legislature sat back while the large, extractive industries exploited our natural resources. Most of the money left the state, while Montana citizens remained behind to pick up the pieces.*"

Although I question the fact that most of the money left the state, I do not have data to disprove that claim. I do, however, have economic data from the Golden Sunlight Mine. Golden Sunlight began operating in 1983. Since that time, Golden Sunlight has purchased $270,299,877 in goods and services from Montana suppliers and $154,446,899

in goods and services from suppliers outside of Montana[1]. Golden Sunlight has paid its employees a total of $192,635,231 in wages and benefits. Suppliers and employees pay taxes. Golden Sunlight has paid taxes totaling $25,068,219. Yet profit realized by Placer Dome, Golden Sunlight's parent company, has totaled only $10,945,000 since 1983. In other words, the Golden Sunlight has given the government 2.3 times what it has returned to the parent company. Economic distribution is presented graphically below.



The Butte representative failed to mention the countless number of doctors, lawyers, engineers, school teachers, or other professional people who received their education with mining dollars. He also did not discuss the hundreds of thousands of meals put on the tables of miners and their families. He did not credit Montana's mining industry with helping to develop the greatest industrial power that this world has ever known. And finally, he made no reference to the fact that Montana's mines provided many of the natural resources needed to defeat axis powers during two World Wars.

We live in the most pampered society in history. So pampered, in fact, that we place higher priority on our recreation than on ensuring that our children have the opportunity to hold decent jobs and live in the state of their choice.

Montanans want higher paying jobs. Those jobs come from industry. However, industry is convinced that Montana is closed to business. House bill 459 is a step toward changing that attitude.

Rick S. Jordan
2425 Harvard
Butte, MT 59701

[1] Data pertaining to money paid for goods and services prior to and including 1990 was unavailable. Thus, average annual outlays for those years were calculated as a function of payroll costs.

Montana Audubon
P.O. Box 595 Helena, MT 59624 • 406-443-3949 • mtaudubon@mcn.net

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 3/12/01
BILL NO. HB 459

Testimony on HB 459
March 10, 2001

My name is Janet Ellis and I am here today speaking on behalf of Montana Audubon.

Montana Audubon has the following questions about this legislation. Although, according to an industry fact sheet, the stated goal of HB 459 is to "clarify the agencies' responsibilities regarding the alternatives analysis and thereby make the environmental review more efficient and equitable." We do not think this goal is realized because of the following questions raised:

A. Section 1, subsection (1)(b)(iv)(C)(I): Requires that any alternative considered by an agency be reasonable in that it must be currently both technology achievable and **economically feasible**. (Page 2, Line 6 - 7)
   - How can a gold mine be made to be economically feasible with today's prices? Copper mine? Silver mine?
   - What information will the agency be required to get before it can determine economic feasibility?
   - How will the agency determine economic feasibility - what assumptions will be made?
   - Does this bill require long-term economic trends be analyzed - or just today's market prices?
   - Do agencies have the expertise to judge what is economically feasible?
   - We assume that a sponsor would have to provide evidence that an alternative is not economically feasible. What financial information will have to be given to the agency to confirm the project sponsor's determination? Does the agency then have the expertise to analyze that information?
   - Since this bill has been changed since the hearing in the House, should there be a new fiscal note to see how much it would cost for agencies to be able to assess economic feasibility?
   - What happens if DNRC is the project sponsor - as well as all the beneficiaries of the school trust - and one of these parties decides that an alternative is not economically feasible?
   - How will a state agency - such as DNRC - determine what is economically feasible for a state initiated project such as a timber sale? Does this change anything from how things are done now - or not?

B. Page 5, lines 8 - 11: Defines "appropriate board," "environmental review," and "project sponsor." It lets "each beneficiary of any trust" be the project sponsor on school trust lands.
   - What happens if school districts want different outcomes?

that was presented. He emphasized the need to give people the right to say how an inspection will be carried out.

{Tape : 5; Side : A}

EXECUTIVE ACTION ON HB 459

Motion: **SEN. GROSFIELD** moved that **HB 459 BE CONCURRED IN.**

Discussion:

SEN. GROSFIELD pointed out that the letter **REP. MOOD** handed out (exhibit 1) clarified the questions raised during the hearing.

Substitute Motion: **SEN. ROUSH** moved that **AMENDMENTS HB045901.AMV EXHIBIT(nas60a18) BE ADOPTED.**

Discussion:

SEN. ROUSH made reference to **REP. MOOD's** letter. He voiced his concerns about the phrase "economically feasible". He warned that keeping the language on page two, line seven of the bill would cause problems for a project. He stated that the requirements for economically feasible are already in law. The bill sets up an agency to get sued by project opponents and proponents. He expressed his concern with allowing citizens to access economic records of a business. He hypothesized that clarifying the language would bring harmony between industry and others.

SEN. KEN MILLER opposed the amendment. He proclaimed that the bill is about the possibility of doing something. He stated that a project may be possible, but not economically feasible. He added that the bill does not put a specific price tag on a project.

SEN. KEN TOOLE spoke in favor of the amendment and asserted economically feasible does tie back to who's paying. He stated that what's economically feasible for one entity may not be for another. He argued that a cost benefits analysis would be appropriate for the bill.

SEN. TASH opposed the amendment and charged that the definitions are already in law. The bill calls for clarification.

SEN. COCCHIARELLA declared that the definition of economically feasible is not well defined. She argued that **REP. MOOD** could

not tell her the purpose of the language. She questioned why the committee would consider language that is left open for interpretation by the agencies. She declared that the language muddies the water for future lawsuits. She spoke with contempt that the Yellowstone Pipeline did not happen. She commented that the project kept handing out money, but the alternative they came up with during the study was unaffordable. The language would not fix or enhance the law.

SEN. GROSFIELD agreed on page two, that MEPA is about working with the human environment. He added that the bill asks if the alternative being proposed for a project is economically feasible. He argued that economically feasible is present in numerous laws. He offered the example of classification of waters. He stated that economically feasible is something that is done all of the time. He warned that without the language the bill would be destroyed.

SEN. MAHLUM called for the question.

Substitute Motion/Vote: **Substitute motion failed 4-7 with Mahlum, Grosfield, miller, Toole voting aye.**

Substitute Motion: **SEN. TOOLE** made a substitute motion **AMENDMENTS HB045902.AMV EXHIBIT(nas60a19) BE ADOPTED.**

Discussion:

SEN. TOOLE declared that the amendment addresses the definition of a project sponsor as described in the Enabling Act. He charged that the language causes the definition to be unclear.

SEN. TASH resisted the amendment because the Enabling Act already identifies school funding from state land projects.

SEN. TOOLE argued the language allows every school district to challenge a project.

SEN. GROSFIELD proclaimed that **REP. MOOD's** letter addresses that particular issue. He resisted the amendment because he believes in local control.

SEN. MAHLUM called for the question.

{Tape : 5; Side : B}

Substitute Motion/Vote: **Substitute motion failed 4-7 with Cocchiarella, McCarthy, Roush, Toole voting aye.**

Substitute Motion/Vote: **SEN. COCCHIARELLA** made a substitute motion that **AMENDMENT HB045903.AMV EXHIBIT(nas60a20) BE ADOPTED. Substitute motion carried 11-0.**

Substitute Motion/Vote: **SEN. GROSFIELD** made a substitute motion that **HB 459 BE CONCURRED IN AS AMENDED. Substitute motion carried 8-3 with Cocchiarella, McCarthy, Toole voting no.**

EXECUTIVE ACTION ON HB 473

Motion: **SEN. TAYLOR** moved that **HB 473 BE CONCURRED IN.**

Discussion:

Ms. Vandenbosch pointed out to the committee that the bill possessed an incorrect title.

Substitute Motion/Vote: **SEN. GROSFIELD** made a substitute motion that **AMENDMENTS HB047303.AMV EXHIBIT(nas60a21) BE ADOPTED. Substitute motion carried 10-0.**

Substitute Motion: **SEN. TAYLOR** made a substitute motion that **AMENDMENT HB047309.AMV EXHIBIT(nas60a22) BE ADOPTED.**

Discussion:

SEN. TAYLOR stated that he realized MEPA is for juries and lawyers. He offered that the amendment provides direction and rules to the bill, along with a balance.

SEN. TOOLE expressed his concern for lack of cooperation between entities who use MEPA. He argued that the amendment does not provide the necessary road map.

SEN. TAYLOR corrected the language on the first line, added the word "sub" to section.

SEN. GROSFIELD maintained that there will be numerous cases where the department would initiate a project. The amendment involves the department in the process, and allows them to make good decisions.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 3/16/01
BILL NO. HB 459

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DOUG MOOD
SPEAKER PRO TEMPORE
REPRESENTATIVE - HD 58

HELENA ADDRESS:
CAPITOL BUILDING
HELENA, MONTANA 59620-0400
PHONE: (406) 444-4800

HOME ADDRESS:
BOX 42
SEELEY LAKE, MONTANA 59868
PHONE: (406) 677-2291

March 16, 2001

To: Members of the Senate Natural Resources Committee

From: Rep. Doug Mood Doug Mood

Re: Clarifications on HB 459

Following the hearing on HB 459, I realized several issues needed clarification. After a thorough review, I offer the following:

The principles of defining "economic feasibility".

Economic feasibility:

1. Is not determined by evaluating the economic strength of a particular project sponsor; but
2. Is based on the specific project and the geographical location of the project.

Therefore, two similar projects, proposed by two sponsors, and proposed in the same or similar geographical area, would have the same alternatives identified as economically feasible. This would be true even if the two project sponsors had great differences in their economic strength.

In other words, the economic viability of the project is analyzed, not the company's financial situation. Alternatives analyzed would be the same for a husband/wife partnership and for a multi-national corporation. The alternatives considered must be economically feasible. I am informed that attorneys for proponents as well as DEQ legal counsel concur with this analysis.

The definition of "project sponsor" including trust beneficiaries.

This provision gives trust land beneficiaries standing to request a review of alternatives before the appropriate board. Because DNRC is the agency charged with administering trust lands on behalf of beneficiaries, that agency initiates management actions and "projects."

In reality, beneficiary institutions, which include MSU, UM, School for the Deaf and Blind, MT Tech, and the "common schools" can already request an audience with the Board of Land Commissioners with grievances, etc. This bill simply allows them to infuse themselves in a more meaningful manner, earlier in the planning process.

I hope this clarifies some of the concern over testimony and interpretations of HB 459. Again, I urge you to give it a "do-pass." Thank you.

SENATE NATURAL RESOURCES
EXHIBIT NO. 18
DATE 3/16/01
BILL NO. HB 459

Amendments to House Bill No. 459
3rd Reading Copy

Requested by Senator Glenn Roush

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 16, 2001 (2:17PM)

1. Page 2, line 7.
Strike: "and" through "feasible"

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 3/16/01
BILL NO. HB 459

Amendments to House Bill No. 459
3rd Reading Copy

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 16, 2001 (2:19PM)

1. Page 5, line 8 through line 11.
Strike: "If" on line 8 through "." on line 11

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 20
DATE 3/16/01
BILL NO. HB 459

Amendments to House Bill No. 459
3rd Reading Copy

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 16, 2001 (2:20PM)

1. Page 2, line 15.
Strike: "appeal"
Insert: "review"

- END -